

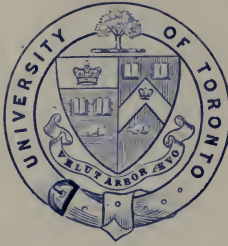


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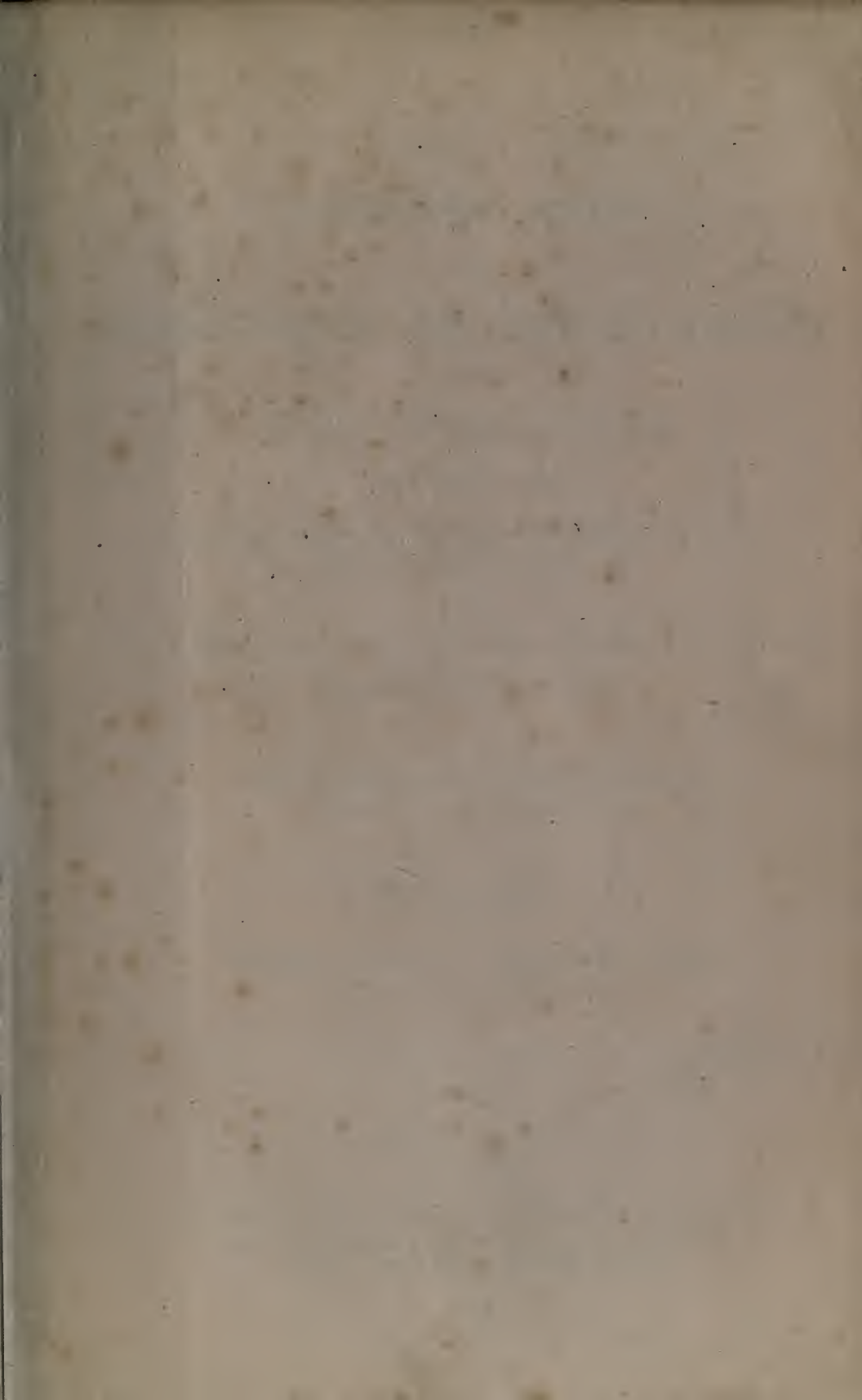
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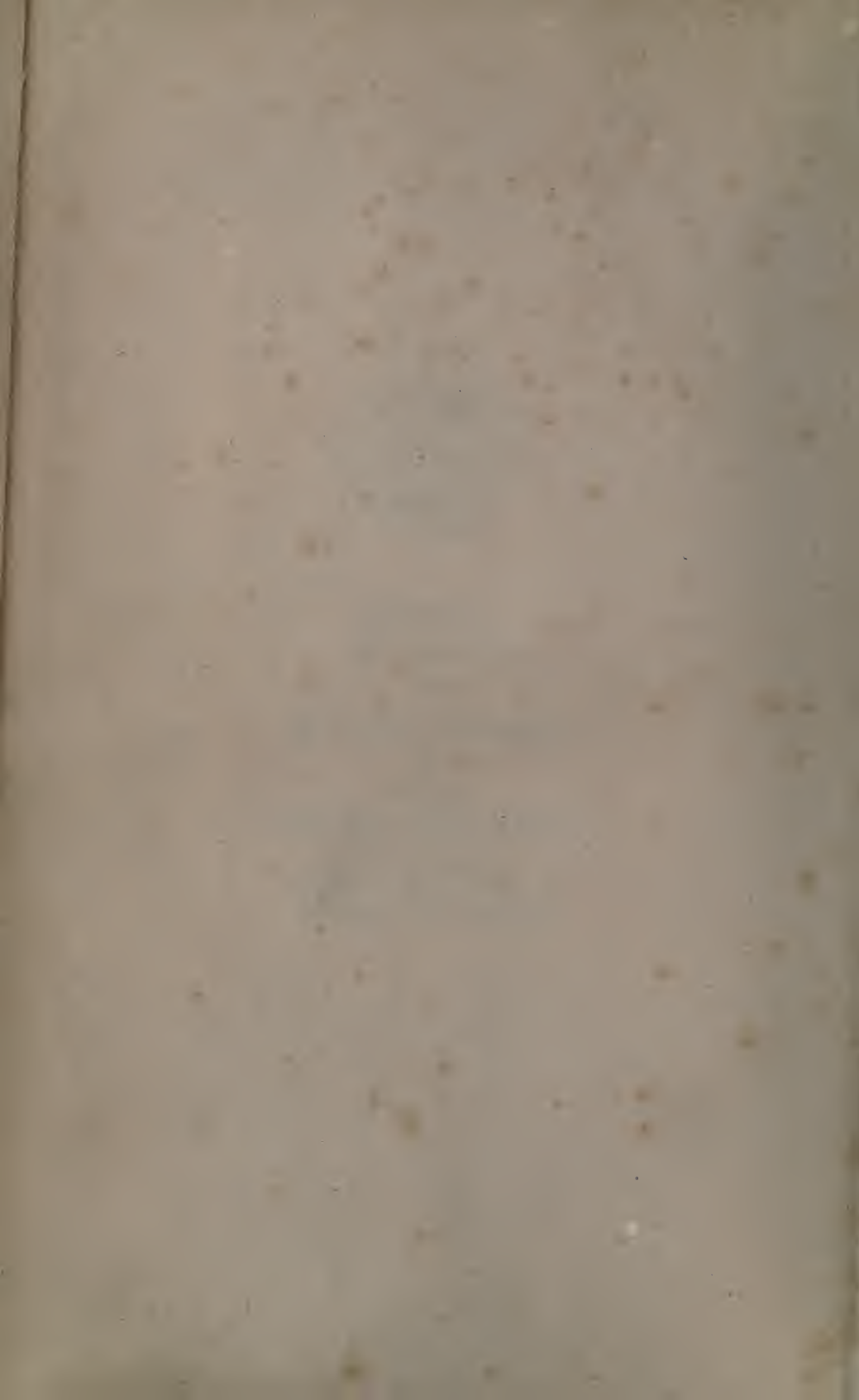
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A
COMPLETE SERIES
OF
PRECEDENTS IN CONVEYANCING
AND OF
Common and Commercial Forms
IN ALPHABETICAL ORDER,
ADAPTED TO THE PRESENT STATE OF THE LAW AND THE
PRACTICE OF CONVEYANCING;
WITH
COPIOUS PREFACES, OBSERVATIONS AND NOTES
ON THE SEVERAL DEEDS.

BY GEORGE CRABB, ESQ.

OF THE INNER TEMPLE, BARRISTER AT LAW.

The Fourth Edition,

EDITED BY

JAMES TRAILL CHRISTIE, ESQ.

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

IN TWO VOLUMES.

VOL. I.

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A NEW Edition of this Work having been called for, the present Editor has endeavoured, without materially diminishing the number of the Precedents, to shorten the Work as much as possible, and to alter the Precedents retained, so as to render them more in accordance with the Form of Drafts now generally adopted. The Prefaces to the different sets of Precedents have been revised with reference to the changes that have been made in the law. The Alphabetical Arrangement has been retained; and it will be seen that the variety of subjects as to which Precedents are given is undiminished.



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PRECEDENTS

IN

CONVEYANCING,

§c. §c. §c.

ABSTRACTS OF TITLE.

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Definition and
use of an ab-
stract.

SECT. 1. When property, not passing by mere delivery, but held by a title, depending on documentary evidence, is to be sold, an abstract of the documents, commonly called an abstract of title, is now furnished by the vendor's solicitor.

Delivery of the
deeds.

2. Formerly it seems to have been the practice for the vendor's solicitor to deliver the deeds themselves to the purchaser's solicitor, by whom the abstract was prepared, *Temple v. Brown*, 6 Taunt. 60; but it has since been held in several cases, that the mere delivery of the deeds is not sufficient, and the purchaser may now require to have an abstract also, *Horne v. Wingfield*, 3 Scott, N. R. 340; *Morris v. Kearsley*, 2 Y. & Coll. 139.

Not a substi-
tute for the ab-
stract.

Purchaser's
right to a title.

3. The right of a purchaser to a good title does not rest in contract, but is implied by law, *Souter v. Drake*, 5 B. & Ad. 992; and a purchaser is not bound to accept a doubtful title, *Abel v. Heathcote*, 2 Ves. jun. 98; *Cane v. Baldwin*, 1 Stark. 65; yet a vendor may stipulate as a condition that the purchaser shall take such title as he has to give, *Wilmot v. Wilkinson*, 6 B. & C. 506; but the terms of the stipulation must be express and unambiguous, in order to release the vendor from his obligation, *Freme v. Wright*, 4 Madd. 364.

Production of
documents by
vendor.

4. A vendor is also bound to produce all documents necessary to verify the title; and if he wish to relieve himself from the necessity of producing any other documents than what he has in his own possession, he must do so in express terms when entering into the contract, *Southby v. Hutt*, 2 My. & Cr. 207.

Abstract pre-
pared at ven-
dor's expense.

5. The abstract must be prepared and the deeds produced at the vendor's expense; and if the deeds are in the hands of third persons, he must defray the charges occasioned by the purchaser's solicitor being obliged to go to the place to examine them.

Division of the
subject.

6. What relates to abstracts may be comprehended under the two general heads, 1st, Preparing the abstract; 2nd, Perusing the abstract; the former of which is the business of the solicitor, the latter of the conveyancer.

7. PREPARING THE ABSTRACT.

8. Preparing the abstract is to be considered as to what regards,

What comprehended under preparing abstract.

1. The commencement of the abstract; 2. The head of the abstract;
3. The contents of the abstract; 4. The comparing the abstract with the title deeds.

9. The most satisfactory document with which an abstract can commence is a purchase deed, from which it may be usually presumed that the state of the ownership was then investigated. It should in no case commence with an assurance that depends for its validity on any prior deed, as a settlement in pursuance of articles, or an appointment under a power; but on this point, and also as to how far back the abstract ought to be carried, see *post*, s. 25.

1. Commencement of the abstract.

10. Every abstract has a head or title, which should show the name of the person whose title is to be considered, the estate he has, and the lands, &c. to which it relates, in this manner—"An abstract of the title of A. B. to the fee simple of the manor of _____, in the county of _____," or, "to a farm or close &c., in the parish of &c."

2. Head of the abstract.

When lands are held for lives or the residue of a term, then the abstract should be headed in this form—"An abstract of the title of _____ to a farm &c., called _____, situate in &c., for the lives of &c.," or "for the residue of a term of _____ years," or "the residue of a term determinable &c."

11. When an abstract relates to lands under different titles, in different shares, or under different tenures, as freehold, copyhold, &c., the abstract of each farm or different property should be arranged separately, and the title should be varied accordingly, in this manner—"As to the freehold part of the said farm," or "as to the fourth part of the said lands which descended to C. D."

3. Arrangement of the abstract.

12. Abstracts ought to contain all the material parts of every instrument, varying according to the nature of the instrument to be abstracted, whether it be a deed, record, act of parliament, fiat of bankruptcy, or will.

4. Contents of the abstract.

13. Abstracts of deeds should contain, first, the Date; secondly, the Names of the parties, their places of residence, and character as heirs, executors, and the like; thirdly, Recitals, their substance or purpose, which should be fully stated; fourthly, the Witnessing Part, including the Consideration, which ought, particularly in annuity deeds, to be set out fully, as also the Receipt Clause, Operative Words, and Parcels, to be given fully; fifthly, the *Habendum*, including all uses, trusts, and powers, *verbatim*, also conditions, provisoes, and covenants, with exceptions as to incumbrances; sixthly, the Execution, Attestation, and Receipt indorsed.

Deeds in general.

14. Abstracts of particular deeds must contain additional particulars.

Particular deeds.

- Appointment.** In the abstract of an Appointment should be set out the power out of which it arises, also the power of revocation, if there be one; also the execution and attestation, very accurately.
- Exchange.** The abstract of an Exchange ought to contain the eviction clause, and the powers and saving clause given fully.
- Bargain and sale.** The abstract of a Bargain and Sale must state whether by indenture or deed-poll, and the consideration must be set out very carefully, as also the time of inrolment.
- Award.** The abstract of an Award under an Inclosure Act should be preceded by showing the title to the lands in respect of which the allotment was made; the authority of the commissioners, "By virtue of an Act passed &c., by the award bearing date &c., was allotted all that &c.;" and, lastly, the inrolment of the award.
- Feoffment.** An abstract of a Feoffment ought to state grant of title-deeds, if any, warranty of title, and indorsement of livery of seisin.
- In the abstract of a Lease, the time of its commencement and the covenants should be stated accurately; and if it be an underlease, the original lease and all underleases should be given.
- Acts of Parliament.** 15. An abstract of a Private Act of Parliament, otherwise called an "Estate Act," should state the session when it passed, and the day when it received the Royal Assent, the title of the Act, the enacting clause, indemnity to purchasers and saving clause. When any local Inclosure Act is abstracted, the abstract ought to show any variations from the provisions of the general Act.
- Fine.** 16. The abstract of a Fine should state the term and the court in which it was levied, the names of plaintiff and defendant, what kind of fine, description of the parcels, and proclamations.
- Recoveries.** 17. The abstract of a Recovery should show the term in which it was suffered, names of demandant, tenant, and vouchees; parcels, and the county in which they are situated; also the time at which the writ of seisin was returnable, and seisin delivered, *ib.*
- Wills.** 18. An abstract of a Will should contain the name and description of the testator, the words of the gift or devise, and every expression in the will in any manner abridging, giving over, or charging the property, in the words of the testator; the execution and attestation; the death of the testator; and (generally, if of freehold property, who was the testator's heir at his death: also if there be a confirmation of a will by the heir-at-law) the appointment of executors; the court where and by whom proved; together with the date of the probate, and, in a register county, the registry; codicils which revoke a will should be given according to the order of the dates; also, in cases of republication, the date of the same.
- Proceedings in Chancery.** 19. Where proceedings in Chancery are to be abstracted, the time of filing the bill, together with the names of the plaintiffs and defendants; the decree as far as it affects the title, as by declaring the

will of the real estate duly proved, decreeing a redemption, foreclosure, partition, &c.; directing a sale or mortgage to be made, portions to be raised, and application of the money, &c.; the master's report, with the order for confirmation; and, lastly, the master's approval of conveyance.

20. In abstracting titles to Copyhold Estates, the date of each surrender and admittance should be shown, the person by whom the surrender was made, the admittances or grants by the lord, upon forfeitures, &c., the lands which were surrendered or to which admittance was granted, also the admittance of the heir as such, the surrenders made to the use of the will, and whether made generally or specially. The will, if any made in pursuance of the surrender, should also be given. Copyholds.

21. In most contracts for the sale of estates a day is fixed, on which the vendor should deliver the abstract of title, and at law the contract may be avoided by the purchaser in case of failure on the part of the vendor, *Berry v. Young*, 2 Esp. 640; *St. Alban's (Duke) v. Shore*, 1 H. Bl. 280; but in equity this rule is not strictly adhered to, *Wynn v. Morgan*, 7 Ves. 202; 1 Sugd. V. & P. 10th ed. 410 *et seq.*; 2 Dixon on Title-Deeds, 452. Delivery of the abstract.

22. On the delivery of the abstract by the vendor's solicitor, the duty devolves on the solicitor for the purchaser to compare the abstract with the title-deeds; and if the latter wish to relieve himself from all responsibility, he will lay the whole matter before counsel; for it has been decided that if he withhold any deed which may be found to affect the title, he does so at his peril, *Ireson v. Pearman*, 3 B. & C. 813; *S. C.* 5 D. & R. 699. Comparing the abstract with the title deeds.

PERUSING THE ABSTRACT.

23. The perusal of the abstract is to be considered as it relates to—
 1. The commencement of the abstract. 2. The contents of the abstract. 3. The accompaniments of the abstract, or evidences verifying the same. What comprehended under the perusal of the abstract.

24. The conveyancer has in the very first instance to consider whether the abstract is carried back sufficiently far so as to enable him to advise upon the title; and where it commences with a deed depending for its validity upon a prior deed, he will require to see such deed; as where a settlement is made in pursuance of articles, he will wish to have an opportunity of inspecting the articles, or where there is an appointment in pursuance of a power, to see the deed creating the power; so where an estate tail is shown, the abstract ought to contain a history of its creation; so in abstracting title deeds relating to terms for years, the deed creating the term should of course be the first in the abstract. So, for the like reason, when any part of the limitations is to the uses or upon the trusts of a former deed, or 1. Commencement of the abstract.

Effect of long
possession.

where the parcels are described by reference to some prior conveyances, the prior deeds, whatever be the date of them, must appear in the abstract; and where the origin of the title is a grant from the Crown, the grant should be abstracted, however ancient it may be, in order to show that there is no remainder or reversion in the Crown; but this need not be insisted on in every case, if the deed is lost, and possession has gone with the estate for a length of time, *Coussmaker v. Sewell*, cited 2 Sugd. V. & P. 10th ed. 134; indeed, long possession, enjoyment, and dealing uninterruptedly with an estate, will of itself in some cases afford a reasonable presumption that there is a good title, without either will or deed, *Cotterell v. Wathins*, 1 Beav. 261; *S. C.* 3 Jur. 283.

Effect of the
new Statute of
Limitations.

25. The general rule in regard to abstracts of title to freehold estates of inheritance has hitherto been that the abstract must show a regular deduction of title for sixty years at least; and it does not appear that any alteration can for the present be made in the time of commencing the abstract, notwithstanding the 3 & 4 Will. 4, c. 27 for, although this act has limited the period to forty years, beyond which an adverse possession becomes indefeasible, yet in many cases, particularly where there is a subsisting tenancy for life, it will render it necessary to carry the abstract further back, see 1 Hayes's Introd. Conv. 5th ed. 280; 2 Sugd. V. & P. 10th ed. 353; 1 Bythw. & Jarm. by Sweet, 3d ed. 59 *et seq.*

Advowsons.

26. Advowsons were not within the old Statutes of Limitations, but they are within the provisions of 3 & 4 Will. 4, c. 27, ss. 30 *et seq.*; and the abstracts of title should be carried back for a century, and contain a statement of the presentations, with the names of the patrons and clerks presented during that period.

Modus decimandi.

27. The 3 & 4 Will. 4, c. 100, has shortened the period for establishing claims to a modus, exemption, or discharge from tithes; but it has not made any new exemption or destroyed the right upon the mere proof of nonpayment within that period, when proof of such nonpayment from time immemorial would not before this act have established an exemption, *Salkeld v. Johnson*, 1 Hare, 196; *S. C.* 6 Jur. 210.

Prescription.

28. The 2 & 3 Will. 4, c. 71, shortening the time of prescription in certain cases, has removed some of the difficulties which attend the investigation of titles founded on prescription.

Limitations of
claims of the
Crown.

29. The rights of the Crown are not affected by any statute, unless expressly named therein, therefore it is not affected by the 3 & 4 Will. 4, c. 27; but it is expressly within the provisions of the Prescription and Modus Decimandi Acts; and by the 3 & 4 Will. 4, c. 74, remainders and reversions in the Crown are not to be affected by the provisions for barring entails. The principal statutes, however, directly limiting the claims of the Crown, are the 21 Jac. 1, c. 2, and

9 Geo. 3, c. 16, which restricts the right of bringing actions for the recovery of lands to the period of sixty years; but this latter statute has been held not to give a title, only to take away the right from the Crown to bring an action, *Goodtitle Baldwin*, 11 East, 495.

30. The contents of the abstract, the heads of which have been before enumerated, may be said to comprehend the whole learning of the law of real and personal property, to which the conveyancer must occasionally have recourse in performing the office of perusing abstracts. To enter into details is not within the scope of a preface, but the following outline is intended to direct his attention to the most important points which may demand investigation. 2. Contents of the abstract.

31. In considering the parts of deeds, the recitals are the first in order which claim attention, they being evidence against the parties, *Doe v. Rogers*, 3 Ad. & Ell. 513; and as against them, they may be relied on as estoppels, *Doe v. Dodd*, 2 Nev. & Mann, 45; *S. C.* 5 Scott, 35. So where a recital shows the objects of the parties to the deed, it is necessary to see that it does not vary from the operative part, or it may vitiate the deed itself. Recitals.

32. The next thing is the consideration, the nature of which, and that it has been fully and properly paid, ought to be duly ascertained and set forth, particularly in annuity deeds, where a failure in these matters will vacate the deed. So where the consideration is to be paid in a particular manner, in execution of a power or performance of a trust, &c., it is of importance to know that the consideration money has been paid to the parties competent to give a discharge, and exonerate the lands from the incumbrance. Consideration.

33. Formerly particular words were necessary in the granting part of a deed, but it is now the practice of the courts, both of law and equity, to give effect to deeds in some way or other, though not according to their literal construction; but care must be taken that the words of the grant proceed from parties competent to do what they profess to do. So it will be necessary to consider the character of the grantor, whether as heir, trustee, executor, and the like. Where the grantor is heir, questions will arise as to his descent, legitimacy, &c.; and in tracing a descent it will be necessary to consider the old law, which governs titles before 1834, and the new law contained in 3 & 4 Will. 4, c. 106; so likewise whether the person, from whom the grantor derives his title, died intestate, or whether dower has attached, or otherwise, and herein of the law of dower as affecting persons married before the 1st January, 1834, and since that time, see 3 & 4 Will. 4, c. 105. Where the grantor is a trustee, it must appear that he has strictly pursued his power, and herein the doctrine of trusts and powers must be brought under consideration. Operative words.

34. Under the head of parcels, it is the province of the conveyancer to ascertain that the lands described or referred to in former Parcels.

deeds are comprised in the deed to which his particular attention is directed, and this object can be effected only by a careful comparison of every deed with the one going before. Care must also be taken that the description of the parcels be true and certain, or capable of being reduced to a certainty.

Habendum.

35. After the parcels follows the *habendum*, the object of which being to define the duration and quantity of interest intended to pass to the grantee, naturally leads to the consideration of estates of different kinds, as whether the grant be in fee simple, fee tail, for life, or for years; whether it be to one grantee or several grantees, and whether, in the latter case, as joint-tenants or tenants in common; also, where it is an estate for life, whether it be for the life of the grantee or some other party, and herein it will be necessary to revert to the statutory provisions affecting estates for life; and also, in the case of joint-tenancy or tenancy in common, to the law of partition at common law and by statute.

Rules relating
to the habendum.

36. In regard to the *habendum*, there are also two rules which ought to be observed, 1. That it do not contradict, nor be repugnant to nor abridge the estate granted, although it may enlarge the premises. 2. The second rule as to the *habendum* is, that, if the grant be of a freehold interest, the *habendum* must be from the time of the execution of the grant, and not at a future time; therefore in the grant of an estate to a man and his heirs, the *habendum* must not be from "Michaelmas day next."

Limitations.

37. The limitations which immediately follow the *habendum* serve to declare for whose use it is intended that the grantee should hold the estate; and herein it will be necessary to distinguish whether it be to the use of the grantee himself or to some other person or persons; and herein of reversions and remainders, and how far they are affected by the provisions of the new Statute of Limitations; and herein also of uses and trusts at common law and by statute. As limitations also frequently contain powers and trusts of sale, or of exchange and the like, it will be necessary to examine them minutely, as the validity of the title derived under them rests essentially upon the particular mode of their execution; so where there is a power or trust to sell, the clause (if any) exonerating the purchaser from seeing to the application of the purchase-money, by declaring the receipt of the trustee to be a sufficient discharge, ought to be carefully looked to.

Trusts of accumulation.
Executory devises, &c.
Conditions.

38. Under this head it will also be proper to consider trusts for accumulation at common law and by statute, and the doctrine of executory devises and contingent remainders.

39. Next to limitations are conditions and provisoes, in respect of which it is necessary to distinguish between conditions precedent, on which estates are sometimes made to commence, and conditions subsequent, which serve to defeat an estate. In the former case care must

be taken to see that the condition, or, more properly speaking, the contingency has happened according to the construction of the words; and, in respect to the latter, it must be seen that the condition is not impossible, insensible, or *malum in se*. Before the 32 Hen. 8, c. 34, such a condition could be reserved only to the grantor or his heirs, but by that act an assignee may take advantage of every condition. As to the time of limitation for bringing an action in case of a condition broken, see 3 & 4 Will. 4, c. 27.

40. The *reddendum* (where there is any) may either precede or follow the limitations. Under this head the conveyancer is led to the consideration of rents, as to the mode of reservation, their different kinds, their recovery and apportionment, &c., and herein also of the statutory provisions on this subject. Reddendum.

41. Where the covenants for title vary from the usual form, the conveyancer will desire to see the exact manner in which they are framed, in order that he may judge of their legal effect, particularly when there are any exceptions, as to the covenant for quiet enjoyment, excepting a right of way, of fishing, sporting, and the like; so if there be a covenant for the production of title-deeds, it must appear in the abstract, that he may know what title-deeds ought to accompany the title, the covenant for the production of such title-deeds being notice of their contents. Covenants.

42. Where a deed is to be executed by more than one party, care must be taken to see that it is executed by all; and if it is to be executed in a particular manner, as in pursuance of a power, the conveyancer will require to see that all solemnities have been duly observed, particularly as regards attestation, see *Hankins v. Kemp*, 3 East, 410; *M^cQueen v. Farquhar*, 11 Ves. 467; *Wright v. Wankeford*, 17 Ves. 454; *Doe v. Peach*, 2 M. & S. 276; *Doe v. Pope*, 2 Marsh. 102. Execution of deed.

43. As the validity of deeds also depends upon their being enrolled or registered according to different acts, this will demand no less care and attention than their execution. Attestation.

44. Besides what relates to deeds in general, every particular assurance has some points that require to be investigated; as if it be a feoffment, whether there has been livery of seisin; and if it be made by attorney, whether the attorney is duly authorized in writing; and also, whether the feoffor be an infant; and if made before 1834, whether there is a clause of warranty (see 3 & 4 Will. 4, c. 27, s. 39). If it be an exchange, made before the 1st of October, 1845 (see 8 & 9 Vict. c. 106, s. 4), whether it be a common law exchange, having the word "exchange" among the operative words, and a consequent implied warranty; and whether the title to the lands received in exchange, as well as that of the lands given in the exchange, be duly set forth. If an allotment or exchange under an Inclosure Act or other act of par- Inrolment.
Requisites of particular deeds.
Feoffment.
Exchange.
Allotment, &c., under Inclosure Acts.

liament, it is necessary to ascertain whether it has the provision giving to the lands received in exchange the precise title which affected the property in lieu of which the allotment or exchange was made, see also as to exchanges in common fields, 6 & 7 Will. 4, c. 115. If it be an award under an Inclosure Act it is necessary to ascertain the time of its enrolment, and whether it falls within the provisions of the 3 & 4 Will. 4, c. 87; see 8 & 9 Vict. c. 118; 9 & 10 Vict. c. 70; 10 & 11 Vict. c. 111; 11 & 12 Vict. c. 99; and 12 & 13 Vict. c. 118.

Partition.

If there is a partition between coparceners, an abstract of the title of each parcener must be made, and the like when under the Land-Tax Acts the land-tax has been redeemed on different lands held on different tenures. If the deeds be a lease and release, reference must be had to the lease for a year, but see 4 & 5 Vict. c. 21; 7 & 8 Vict. c. 76; and 8 & 9 Vict. c. 106, which have rendered the lease in this assurance unnecessary for the future.

Lease and re-
lease.

Leaseholds.

45. Where the abstract relates to leaseholds it is now settled both at law and in equity, although long questioned, that, if the seller have not protected himself by express stipulation, the purchaser may require to have the title of the original lessor as well as that of the lessee; so where there is notice of any term, it is necessary to ascertain the nature of the covenants, and whether they run with the land; and where there is an outstanding term, whether it has become attendant upon the inheritance, see 8 & 9 Vict. c. 112. And where there is a renewable lease, whether the former lease has been surrendered, and herein of the learning of surrender and merger; so where any lease is executed by tenant in tail, by husband and wife in right of the wife, by bishops in right of their churches, or by ecclesiastical corporations, it will be necessary to ascertain that they have been made according to the provisions of the enabling and disabling statutes; so where the vendor of a leasehold is a legatee, it must be shown that the executors have given their assent to the legacy; so where a leasehold is sold subject to an apportioned rent, it must be made to appear how the apportionment has been made.

Fines and re-
coveries.

46. As to fines, the points to be considered are whether the conusor is competent to levy the fine, and the conusee was capable of taking by a fine; and where the fine has been levied by a married woman before 1834, it must be made to appear that she was not within the provisions of 11 Hen. 7, c. 20; also, whether the parcels are the proper subject of a fine, and the proper solemnities have been observed so as to render the fine complete. As to a common recovery, the points of consideration are—1. The writ of entry on which the recovery has been suffered; 2. The writ to be brought against the tenant of the immediate freehold, called the *tenant to the præcipe*; and, 3. Whether the proper party is vouched, and when the voucher is double, whether he vouched over. The law of fines and recoveries, which, for some time

to come, will be very important in the deduction of titles, must now be considered, not only with reference to titles prior to the 3 & 4 Will. 4, c. 74, but also in reference to titles under the assurances substituted for them by that act, and also with regard to provisions therein contained for the amendment of fines and recoveries.

47. As to wills, it is necessary to consider what might or might not be devised or bequeathed before the new Will Act, 7 Will. 4 & 1 Vict. c. 26, also what estates might be created, and by what words, also, in case of personalty, whether the will has been proved; and in the case of legacies, it is necessary to ascertain the assent of the executor, and many other points. Wills.

48. If the abstract show that the property therein comprised has been subject to any mortgage, since paid off, the title of the person or persons receiving the mortgage money, and reconveying the mortgaged premises, if different from the original mortgagee, will also have to be deduced from such original mortgagee; and if, as is sometimes the case, the mortgage deed shows that the mortgage money was trust money, it will be necessary to see that the mortgage money when paid off was received by the persons entitled under the trusts, and applied in accordance with such trusts. These observations also apply when the mortgage is still subsisting, and is intended to be paid out of the purchase money. Mortgages.

49. The foregoing observations in regard to freeholds are, in many respects, applicable to lands of copyhold tenure; but in deducing a title to lands of this tenure, regard must be had to the particular customs of each manor, as affecting the rules of descent, fines, heriots, rents, services, and the rights of freebench and curtesy; also to the customary mode of conveyance by surrender; and where there is an enfranchisement, it is necessary that the title of the lord of the manor, as well as of the vendor, should be investigated. Copyholds.

50. It is not usual for the vendor's solicitor to abstract judgments and other incumbrances, not made by deed or will, although it has been decided that no incumbrance ought to be withheld that is likely to affect the title, *Richards v. Barton*, 1 Esp. 269. This, therefore, renders it necessary for the purchaser's solicitor to make a search, which, before the 2 & 3 Vict. c. 11, was made for ten years, but which under that act is now only for five years. The same measure of precaution was and still is, notwithstanding this last-mentioned act, particularly necessary in regard to crown debts. Incumbrances.

51. Although the abstract may appear upon the face of it to contain all that is sufficient, yet the conveyancer on the perusal of it will find many things wanting to enable him to deduce a good title. Where a title depends on a fine and recovery, or other assurance upon record, office copies of the records thereof will be required. Of the facts of marriages, births, or deaths, a copy duly certified by the minister of Accompaniments and evidences verifying abstract.

the parish of the baptismal, marriage, or burial, register will be called for; in the case of a seaman in her Majesty's service, entries in the books of the navy office will be deemed sufficient. Of the legitimacy of a child, certificate of the marriage of the parents, and proof of consent if they were infants, must be adduced; so of failure of issue, an affidavit by some person acquainted with the family has been deemed sufficient, *Benning v. Griffiths*, 15 East, 293; or an inquisition of an escheat, *Faulkner v. Silk*, 3 Campb. 1; so of executorship or administratorship, probate must be produced; and of intestacy, letters of administration. Of descents, a pedigree verified by such evidence as would satisfy a jury of honourable men would be deemed satisfactory; and to this end declarations in families, tradition, common reputation, descriptions on monuments, entries in Bibles, engravings on old rings, and other evidences of the like kind, which are free from all suspicion, have been admitted, *Whitelock v. Baker*, 13 Ves. 511. So recitals in deeds will be admitted as evidence of lost deeds; so even private written documents, as entries in a deceased attorney's book of charges for executing a deed, *Skipwith v. Shirley*, 11 Ves. 64. The identity of the parcels in the later deeds of the abstract with those in the former deeds will frequently require to be proved by declarations by persons who have long known the property.

ACCOUNTS.

No. I.

Allowance.

No. I.

Allowance of an Account stated.

Obs. This is not an acknowledgment of the receipt of the balance, and therefore does not require a receipt stamp, *Wellard v. Moss*, 1 Bing. 134; *S. C.* 7 Moore, 503. So for the same reason, an account current, when written not upon the receipt of the different sums but after and only amounting to admissions of money formerly received, does not require a receipt stamp, *Wright v. Shawcross*, 2 B. & A. 502, n.; see further *Acquittance*.

We the above-named A. B. and C. D. having carefully examined and compared the above-mentioned account with the several vouchers do approve and allow of the same and do admit that the balance of £ is a just and fair balance As witness our hands this day of 18 .

Witness

E. F.

G.

A. B.

C. D.



No. II.

No. II.

Allowance of an Account stated by a Nominee appointed under the 17 Geo. 3, c. 53, for building or repairing a Parsonage. Under 17 Geo. 3, c. 53.

Obs. This statement is required to be given under 17 Geo. 3, c. 53, and 21 Geo. 3, c. 86, by the nominee, and must contain an account of the monies advanced and paid by him for the building or repairing the parsonage house and buildings belonging to the living, together with the bills of the several persons employed, which is to be allowed by the ordinary, patron and incumbent.

We have examined and do hereby approve and allow the above accounts Given under our hands this day of .

A. B. (*Ordinary.*)C. D. (*Patron.*)E. F. (*Incumbent.*)

ACKNOWLEDGMENTS.

Gen. Obs. Informal instruments serving as mere memoranda may, as a rule, be admitted in evidence, without any stamp. An agreement stamp is necessary only when a paper is evidence of an agreement directly, but not when it is used incidentally, *Wheldon v. Matthews*, 2 Chit. 399. So an acknowledgment of having received money for another does not require a receipt stamp, see *Acquittance*. Distinction between acknowledgments and agreements, or receipts.

No. III.

No. III.

Acknowledgment that an Agreement entered into by one was on behalf of another. Agreement.

I hereby acknowledge that an agreement entered into by me bearing date and made &c. was entered into by me for and on behalf of C. D. A. B.

No. IV.

No. IV.
Bill of Exchange.

Acknowledgment of having received a Bill of Exchange for a particular Purpose.

Obs. This may be admitted in evidence without any stamp, *Langdon v. Wilson*, 2 Mann. & Ry. 10; see further, *Acquittance*.

I have received a bill of exchange which I hold as your at-

No. IV.
Bill of Ex-
change.

torney to recover the value thereof from the parties or to make such arrangement for your benefit as may appear to me in my professional character reasonable and proper.

A. B.

No. V.
Debt.

No. V.

Acknowledgment of a Debt, so as to take the Case out of the Statutes of Limitations.

Obs. By the 9 Geo. 4, c. 14, s. 1, no acknowledgment or promise by words only, in an action of debt or on the case, grounded on simple contract, will be sufficient evidence of a new or continuing contract, so as to take the case out of the Statute of Limitations, unless it be in writing, or there be part payment. The 3 & 4 Will. 4, c. 42, s. 5, contains a similar provision in respect to debts on bonds, or other specialties. By the 3 & 4 Will. 4, c. 27, s. 40, any person's right to money charged on land, or any legacy, may be kept on foot by a written acknowledgment duly delivered to the person interested, or his agent. Acknowledgments which the 9 Geo. 4 requires to be in writing are by s. 8 of the same act exempted from stamp duty.

I do hereby acknowledge that the sum of £ being part of the sum of £ lent to me by C. D. of &c. is still owing and unpaid.

A. B.

No. VI.
Debt, &c.

No. VI.

Acknowledgment of a Debt or Legacy still due, to prevent its being barred by the 3 & 4 Will. 4, c. 27, s. 40.

I, A. B. of &c. do hereby acknowledge that the sum of £ payable to C. D. (under or by virtue of the will of E. F. bearing date &c.) is still due and owing by me Witness my hand this day of 18 .

A. B.

No. VII.
Receipt of
Deeds.

No. VII.

Acknowledgment of the Receipt of Deeds.

I do hereby acknowledge that the above-mentioned several deeds papers and writings are left and deposited in my hands in trust for A. B. and C. D. to be kept as I keep my own goods and writings and to be produced for the use of either of the said parties as their respective occasions shall require Witness my hand this day of 18 .

G. H.

No. VIII.

Acknowledgment by a Nominee under 17 Geo. 3, c. 53, of the Receipt of Money borrowed under the Directions of the Act.

No. VIII.
Receipt of
Money borrowed.

I A. B. being nominated pursuant to the directions of the 17 Geo. 3 c. 53 to receive and apply the money authorized by that Act to be borrowed for the purpose of building [*or repairing &c.*] the parsonage-house [*or outbuildings &c.*] belonging to such living do hereby acknowledge to have received from C. D. the sum of £ being the sum for which a mortgage is to be made Witness &c. [*see ante*, No. II.]

Acknowledgment of having received Mortgage Money,—see post,
ACQUITTANCES.

No. IX.

Acknowledgment of Writings received by a Mortgagor.

No. IX.
Receipt of
Writings.

Received the day of, 18 the several deeds papers and writings mentioned and particularised in the under-written schedule which I hereby promise to deliver upon the receipt of £ this day lent and advanced by me to the under-mentioned (*mortgagor*) his heirs or assigns to keep the same safe and uninjured [*loss or damage by fire or other inevitable accidents excepted*] Witness &c. C. D.

A schedule of the deeds papers and writings relating to a certain messuage &c. situate &c. the property of A. B. the mortgagor delivered to C. D. for securing the repayment of the sum of £ and interest 17 & 18 May 18 . Indentures of lease and release of these dates the release made between &c.

No. X. (1.)

Acknowledgment by Mortgagor in Possession of the Mortgagor's Title, so as to take the Case out of the Stat. 3 & 4 Will. 4, c. 27.

No. X. (1).
Title,
(Mortgagor).

Obs. By the 3 & 4 Will. 4, c. 27, s. 28, a mortgagor's right to the equity of redemption may be kept on foot for twenty years by a written acknowledgment given to him or his agent duly authorized.

I do hereby acknowledge that the messuages and premises whereof I am now in receipt of the rents and profits which are comprised in a certain deed of indenture by way of mortgage bearing date &c. and made &c. do belong to the said (*mortgagor*)

No. X. (1). and on payment of the said sum of £ with interest within
 Title, months from the day of shall be reconveyed to him.
 (Mortgagor). (Mortgagee.)

No. X. (2.)
 Title,
 (Person).

No. X. (2.)

*Acknowledgment of a Person's Title to certain Land, so as to
 take the Case out of the Stat. 3 & 4 Will. 4, c. 27.*

Obs. By the 3 & 4 Will. 4, c. 27, s. 14, when any acknowledgment of the title of the person entitled to any land or rent shall have been given to him or his agent, signed by the person in possession or in receipt of the rents and profits of such land, or in receipt of such rent, then such possession or receipt of or by the person by whom such acknowledgment shall have been given shall be deemed according to the meaning of this Act to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given; and the right of such person shall be deemed to have first accrued at the time of such acknowledgment, or the last of such acknowledgments, if more than one.

I do hereby acknowledge that the messuage and hereditaments at in whereof I am now in possession do rightfully belong to C. D. the true owner his heirs and assigns.

A. B.

No. XI.
 Transfer,
 (Stock).

No. XI.

Acknowledgment by Trustees of the Transfer of Stock upon Trust.

We the within-named A. B. and C. D. do hereby acknowledge that the sum of £ bank stock within mentioned hath been transferred to and accepted by us upon the trusts within mentioned Witness &c.

A. B.

C. D.

No. XII.
 Vendor.

No. XII.

Acknowledgment by a Vendor and his Wife of a Deed before the Lord Mayor of London, indorsed thereon previously to Inrolment in the Lord Mayor's Court, to bar the Wife of Dower.

Obs. By the common law, a deed acknowledged by the husband and wife would be inrolled for the husband only, but by the custom it is otherwise, 2 Inst. 673. A bargain and sale of lands executed by husband and wife, and acknowledged before the Lord Mayor, or Recorder, or an Alderman, and inrolled in the Court of the Hustings,

the wife being previously examined, will be as binding on her as a fine would have been, Bohun. Priv. Lond. 241; Com. Dig. tit. Lond. (N); 1 Cru. Dig. 177, 4th ed. By 34 Hen. 8, c. 22, all such conveyances before mayors, aldermen, recorders, chamberlains, or other head officers, as well of the city of London as of other cities, should be of force, notwithstanding 32 Hen. 8, c. 28. As to acknowledgments by married women in other cases under the new law, see *Disentailing Deeds*.

No. XII.
Vendor.

Be it remembered that on the day of 18 personally came before me (*Mayor*) Lord Mayor of the City of London the within-named (*vendor*) and M. (*wife*) his wife and did then and there severally own and acknowledge the within-written indenture to be their free and voluntary act and deed and the said M. being by me the said Lord Mayor privately examined apart from her said husband did declare her free and voluntary consent to the said deed and that she executed the same without fear or force of her said husband or any other person and that at the time she knew the same to be an absolute conveyance of the estate within mentioned to the within-named (*purchaser*) and the said (*vendor*) did also acknowledge the name (*his name*) subscribed to the receipt indorsed upon the said indenture to be his name and handwriting and that he had received the consideration money therein mentioned. *In Witness* whereof I the said Lord Mayor &c.

ACQUITTANCES.

- | | |
|---|-------------------------------------|
| 1. <i>Definition.</i> | 4. <i>Effect of an Acquittance.</i> |
| 2. <i>Acknowledgment not a Receipt.</i> | 5. <i>Effect of last Receipt.</i> |
| 3. <i>Form of a Receipt.</i> | 6. <i>Indorsement of Payment.</i> |

Sect. 1. An acquittance signifies a release or discharge in writing Definition.
of a sum of money or debt due. It must be on a stamp, the value of which must be according to the amount. A receipt in full of all demands requires a 10s. stamp. If it include a release, it must bear a deed stamp.

2. A memorandum in these words, "Mr. T. has left in my hands £200," has been held not to require a receipt stamp, which is only necessary where the document has been given for or upon the payment of money, and in discharge of something already due, *Tomkins v. Ashby*, 6 B. & C. 541. Acknowledgment not a receipt.

Form of a receipt.

3. A receipt need be in no particular form to make it liable to a stamp. If a party on receiving payment writes the word "Settled," he is liable to the penalty for giving a receipt without a stamp, *Spawfort, q. t. v. Alexander*, 2 Esp. 261.

Effect of an acquittance.

4. An acquittance, or mere receipt without seal, is only evidence of satisfaction, and not conclusive against the party who signed it, *Stratton v. Rastall*, T. R. 366. But when a man by deed acknowledges himself satisfied, it is a good plea in bar, without receiving anything, *Rowntree v. Jacob*, 2 Taunt. 141; and a court of law can only avoid the deed by equitable interference, *Legh v. Legh*, 1 B. & P. 447; *Shaiff v. Jackson*, 3 B. & C. 421. An acquittance, or receipt in full of all demands, will discharge all debts except such as are on specialty, as bonds, bills and the like, Cro. Jac. 650.

Effect of last receipt.

5. Where there has been a series of dealings, the last receipt will be considered as presumptive evidence that all the previous payments have been made, especially if the receipt be in full of all demands; and if under hand and seal, the presumption is so strong, that the party will not be allowed to prove the contrary, *Alner v. George*, 1 Campb. 392; 3 Chitt. Comm. Law, 134.

Indorsement of payment.

6. Formerly an indorsement of the payment on a bond was admitted in evidence to rebut the presumption, that after twenty years it was satisfied, *Serle v. Barrington*, 8 Mod. 278; but now, by 9 Geo. 4, c. 14, s. 7, no indorsement or memorandum of payment on any bill of exchange or other writing will be sufficient evidence of payment, to take the case out of the Statute of Limitations.



No. XIII.

No. XIII.
Mortgage.

Acknowledgment of having received Mortgage Money.

I do hereby acknowledge that I have received this day
of of the within-named (*mortgagor*) the sum of £
being in full for principal and interest monies due to me as the
executor of the within-named (*mortgagee*) on the within mort-
gage



No. XIV.

No. XIV.
Purchase
Money.

Acquittance for Purchase Money in a Conveyance.

Obs. Care should be taken to have the receipt properly indorsed, as the general acknowledgment in the body of the deed will not be conclusive evidence of payment, Styl. 461; 1 Ca. Chan. 119; *Coppen v. Coppen*, 2 P. Wms. 290.

RECEIVED on the day of the date of the within-written indenture of and from the within-named (*purchaser*) the sum of one thousand pounds being the full consideration money within mentioned to be by him paid to me.

Witness to the above-mentioned payment and to the signing hereof

C. D.
E. F.

A. B. (*vendor.*)

No. XIV.
*Purchase
Money.*

£
1000

No. XV.

Another, where the Consideration is Stock.

No. XV.
Stock.

Received and accepted the day and year first within-written of and from the within-named (*purchaser*) the transfer of the capital sum of £ reduced bank annuities being the consideration within-mentioned to be transferred to me.

Witness &c.

£
Reduced
Annuities.

No. XVI.

Acquittance from Vendors, being Trustees under a Will, to Purchasers in equal Moieties.

No. XVI.
*Trustees,
(Vendors).*

Obs. If there are two releases, the receipt must refer to each.

We the within-named A. B. C. D. and E. F. parties to the within-written indenture do hereby acknowledge to have received on the day of the within-written indenture of and from the within-named G. H. and I. K. the sum of being the full consideration money within mentioned to be by them paid to us that is one moiety thereof from the said G. H. and the other moiety thereof from the said J. K. [*If there are two releases add "And for which said sum of £ we have also signed a receipt in like manner on the back of another such indenture of release within-written."*]

Witness &c.

£

ACTS OF PARLIAMENT.

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| <p>1. <i>Division of Acts of Parliament.</i>
 <i>Local and Personal Acts.</i>
 <i>Personal Acts.</i></p> | <p><i>In what Cases adopted.</i></p> |
| <p>2. <i>Estate Acts.</i></p> | <p>3. <i>Mode of proceeding as to Private Bills.</i>
 4. <i>How carried through.</i></p> |

Division of Acts of Parliament.

Sect. 1. Acts of Parliament are distinguished into public and private, and these latter are again distinguished into *local and personal*, or *personal* merely.

Local and personal Acts.

Local and personal Acts comprehend Canal Acts, Railway Acts, Waterworks Acts, Inclosure Acts and other Acts of a like kind, which, though they generally contain a clause declaring them public Acts, are nevertheless classed among private bills.

Personal Acts.

Personal Acts relate only to individuals, and to matters of a purely private nature, as the naturalization of private individuals, divorce bills, and the like, but more especially bills relating to estates, which are on that account called Estate Acts.

Private bills as assurances.

2. Estate Acts are a species of assurance by matter of record, not depending on the act of the parties themselves, to substantiate, preserve and be a perpetual testimony of the transfer of property from one man to another, or of its establishment when transferred. They are a common mode of assurance where ordinary proceedings in courts of justice will not avail, so as to enable tenants for life to sell parts of the estate to discharge incumbrances, or to grant leases, to remove and obviate difficulties arising from infancy in selling, settling or otherwise disposing of their estates, to establish and confirm exchanges, and the like.

In what cases adopted.

3. Private bills generally originate in the House of Lords, where they are carried on with great deliberation and caution. Great care is taken that the enactment in an Estate Act shall be for the general benefit of all persons prospectively entitled to the property in question; and if the property be in settlement, great deference is shown to what may have been supposed to have been the intentions of the settlor. If the deed or will creating the settlement contained powers for persons having a limited interest to deal with the property to a certain extent inconsistent with such limited interest, it will generally be assumed that the settlor purposely abstained from granting the powers sought for, and Parliament will in consequence refuse to grant them. They are, therefore, always referred to the judges for their approbation; and by order of the House, no private bill can be read in the House until one of the printed copies thereof shall have been delivered to every person concerned in the same bill before the meeting of the committee upon such bill; and in case of infancy, the copy must be delivered to

Mode of proceeding as to private bills.

the guardian or next relation of full age not concerned or interested in the passing of the bill.

4. The first step taken for the bringing in a private bill is a petition to the House in which it originates, by the parties interested, stating the relative situation of the parties interested, and the state of their claims, &c.; and this petition must be signed by all parties concerned in the event of the bill, and attested by two witnesses. See further "Practical Instructions for passing Private Bills through both Houses of Parliament."

How carried through.

5. "The Companies Clauses Consolidation Act, 1845," 8 & 9 Vict. c. 16; "The Lands Clauses Consolidation Act, 1845," 8 & 9 Vict. c. 18; and "The Railways Consolidation Act, 1845," 8 & 9 Vict. c. 20, are always incorporated with acts creating a corporation for the construction of railways, and contain most of the provisions which, before the passing of these acts, were enacted specially in each railway act. The first mentioned act contains provisions for the due registration of the shareholders, for the transfer of shares, for the making of calls, for the forfeiture of shares for nonpayment of calls, for borrowing money, for holding meetings, for appointment and rotation of directors and auditors, for the appointment of arbitrators and umpire, and for the recovery of damages and penalties. The Lands Clauses Consolidation Act contains provisions for the purchase of land from persons under disability to sell, and powers authorizing the purchase of land when the owner refuses to sell, with powers for ascertaining the amount of the purchase-money, and directions for the application of the purchase-money. The Railways Clauses Consolidation Act contains all the necessary powers and provisions for the construction of the railway, for the temporary use of land near the railway during the construction thereof, provisions for the care of the railway crossing roads, and for the construction of bridges for carrying the railway over any road, and for the construction of works for the accommodation of lands adjoining the railway, and all necessary powers for working the railway when made.

No. XVII.

An Act to enable two Minors to make Settlements upon their Intermarriage of their respective Estates.

No. XVII.
Estate Act.

Whereas by virtue of certain indentures of lease and release made or expressed to be made between &c. the messuages or tenements lands and hereditaments hereinafter described were conveyed and assured unto the said (*Trustees*) and their heirs to the use of (*Father of Intended Husband*) of and for the term of his natural life with remainder to the use of the said (*Intended Hus-*

Recital of seisin in tail.

No. XVII. <i>Estate Act.</i>	<i>band</i>) and the heirs male of his body lawfully begotten with divers remainders over <i>And whereas (Intended Wife)</i> spinster is
Of seisin in fee of intended wife.	seised in fee simple or fee tail part in possession and part in reversion of one undivided third part of divers manors and is
Treaty of marriage.	entitled by her father's will to the sum of £ on her marriage <i>And whereas (Father of I. H.)</i> and the said (<i>Guardians of I. W.</i>) have entered into a treaty for the marriage of the said
Intended husband to settle his estate.	(<i>I. H.</i>) with the said (<i>I. W.</i>) and for the settling their respective estates and effects for the benefit of them and the issue of the marriage; but the said (<i>I. H.</i>) and (<i>I. W.</i>) being both under the age of 21 years such mutual settlements cannot be made to the satisfaction of the parties concerned according to the common course of the laws of this kingdom without the aid and authority of Parliament Therefore your Majesty's most dutiful &c. and be it enacted That it shall and may be lawful for the said (<i>F.</i>) and
Intended wife to settle her estate.	(<i>I. H.</i>) notwithstanding his minority by any deed or deeds writing or writings conveyances surrenders and assurances to be by them the said (<i>F.</i>) and (<i>I. H.</i>) notwithstanding such his minority executed in the presence of three or more witnesses To convey settle limit surrender and assure either before or after the said intended marriage All and every the freehold and copyhold lands messuages &c. unto and upon such person or persons to for and upon such uses estates trusts intents and purposes and subject to such provisions declarations and agreements as are and shall be stipulated and agreed upon between the said (<i>F.</i>) and (<i>G.</i>) And be it further enacted That it shall and may be lawful for the said
Conveyances to be valid notwithstanding their minority.	(<i>I. W.</i>) by any deed or deeds &c. by her notwithstanding such her minority executed in the presence of &c. by and with the consent and approbation of the said (<i>G.</i>) or the survivors &c. to convey &c. unto and upon &c. And be it further enacted That such mutual conveyances surrenders settlements and assurances so to be made and executed by the said (<i>I. H.</i>) and (<i>I. W.</i>) &c. shall notwithstanding such the respective minorities of the said
Intended husband to give releases and discharges.	(<i>I. H.</i>) and (<i>I. W.</i>) be as good valid and effectual in law to all intents and purposes as if they respectively had been of the full age of 21 years at the time of the making and executing thereof And be it further enacted That it shall and may be lawful to and for the said (<i>F.</i>) and the said (<i>I. H.</i>) notwithstanding his minority to give any release and other discharge for the said several sums of £ and such other sums of money as the said (<i>I. H.</i>) will be entitled to have and receive in case the said intended marriage shall be had and solemnized and to pay and apply and

dispose of all or any part thereof or direct the same to be paid applied and disposed of in such manner and to and for and upon such uses trusts intents and purposes as is or shall be agreed upon between the said parties and that such discharge and the payment application and disposition of the said sums shall be as good effectual and binding in law against him the said (*I. H.*) as if he had been of the full age of 21 years and that he the said (*I. H.*) may give acquittances and releases for the receipts and profits of such of the premises as by such settlements to be made as aforesaid he shall be entitled to receive and take the rents and profits of and that such acquittances shall be as valid &c. Saving &c.

No. XVII.

Estate Act.

ADMITTANCES.

No. XVIII.

Admittance of a new Tenant to Copyholds.

No. XVIII.

*Of a new
Tenant.*

Obs. 1. Admittance is the acceptance of a tenant by the lord, which gives an equitable but not a legal title. Admittance of a tenant for life is the admittance of remainderman where there is no custom, *Barnes v. Cook*, 3 Lev. 308; *Dean of Ely v. Caldecott*, 8 Bing. 439. So the admittance of joint tenants is as of one tenant, *Kitch.* 122; 1 Cov. Watk. Copyh. 338. So also, as it should seem, in the case of coparceners, 1 Cov. Watk. 339; *Rex. v. Lord of the Manor of Bonsall*, 3 B. & C. 173.

2. By the 11 Geo. 4 & 1 Will. 4, c. 65, s. 3, an infant by his guardian or attorney, a feme covert by attorney, and a lunatic by committee, may be admitted to copyholds. If in such cases the fines be not paid within three months after admittance, they may (by s. 6) be demanded by a note in writing, to be signed by the lord of the manor or his steward and left with the guardian of the infant, the feme covert or her husband, and the committee of the lunatic.

3. By the 55 Geo. 3, c. 184, an admittance requires a stamp of £1 when the clear yearly value exceeds £20, but where it is under that value, a 5s. stamp, and also a further progressive duty of £1 for every entire quantity of 1080 words above the first 1080, and when there is more than one admittance on the same piece of vellum or parchment, the proper duty to be paid in respect to each. The copy of court roll of any admittance requires the same duty. By the act 13 & 14 Vict. c. 97, upon the *sale or mortgage* of copyhold estates, the stamp duty is reduced to 2s. 6d. upon "any admittance out of court, or the memorandum thereof, or the copy of court roll of any admittance in court," with a progressive duty of 2s. 6d. for "every entire quantity

Stamp.

No. XVIII.
Of a new
Tenant.

of 1080 words over and above the first 1080 words." In cases where the admittance is neither upon a sale or mortgage, the stamp duty imposed by the act of 55 Geo. 3, c. 184, is still payable.

Manor of F. } Be it remembered that on the day of
in the county of . } 18 (Tenant) of &c. came in
his proper person (a) before me A. B. lord [*or* "steward"] of the
manor of F. aforesaid and prayed to be admitted to all and singular the customary messuages lands tenements and hereditaments situate lying and being within and parcel of the said manor and all and singular other the premises with the appurtenances thereunto belonging to which said premises the said (T.) became entitled as eldest son and heir-at-law of (I. H.) deceased late a copyhold or customary tenant of this manor To whom I the said A. B. as lord of the said manor personally granted seisin thereof by the rod (*or* To whom the lord of the said manor by me his said steward granted &c.) To hold to him the said (T.) and his heirs for ever by copy of court roll at the will of the lord or lords for the time being [*or, if the admittance be by the steward, say in the common form* "at the will of the lord"] according to the custom of the said manor by the several yearly rents and services therefore due and of right accustomed And the said (T.) gave to the lord for his fine £ but the fealty was respited (b) And so saving to the lord his right the said (T.) was admitted tenant to the said premises in manner and form aforesaid.

In the } S. S.
presence of } R. R.

A. B. lord (*or*
"steward") &c.

AFFIDAVITS, AFFIRMATIONS, OR DECLARATIONS.

- | | |
|--|---|
| 1. <i>Affirmations by Quakers, Moravians, and Separatists.</i> | 4. <i>Voluntary Oaths abolished.</i> |
| 2. <i>Declarations substituted for Oaths and Affidavits.</i> | 5. <i>Declaration of attesting Witness.</i> |
| 3. <i>Oaths, &c., to be taken in Court.</i> | 6. <i>Affidavits exempt from Stamp Duty or otherwise.</i> |

Affirmations by
Quakers and
Moravians.

Sect. 1. By the 3 & 4 Will. 4, c. 49, amending and extending the 8 Geo. 1, c. 6, and 6 Geo. 3, c. 53, Quakers and Moravians are per-

(a) Or in the case of an infant, feme covert or lunatic, "by C. D. of &c. gentleman his [*or* 'her'] guardian, (attorney or committeee)."

Exception.

(b) Where in the case of an infant, feme covert or lunatic, the fines are not paid on admittance, then omit this clause, and add "and so saving," &c.

mitted to make a solemn affirmation or declaration instead of an oath or affidavit in all cases where an oath is required, and falsely affirming is made punishable as perjury. By s. 82 of the last-mentioned statute a similar provision is extended to a description of dissenters called Separatists.

2. By the 5 & 6 Will. 4, c. 62, provisions are made for abolishing oaths, affidavits and affirmations; by (s. 2) in all official matters relating to the excise, customs, &c.; by (s. 9) in the case of churchwardens and sidesmen; by (s. 10) in the case of persons acting in turnpike trusts; by (s. 11) in taking out a patent; by (s. 12) in the case of pawnbrokers; by (s. 14) in transferring stock.

Declarations substituted for oaths and affidavits.

3. By (s. 7) of the last-mentioned statute, oaths and affirmations are to be administered, taken and made as before in all judicial proceedings in courts, or in any proceedings before magistrates by way of summary conviction.

Oaths, &c., to be taken in court.

4. By (s. 13) of the same statute, justices of the peace are not to administer or receive voluntary oaths or affidavits touching matters whereof they have no jurisdiction; but by (s. 18) any justice of the peace, or notary public, or other officer by law authorized to administer an oath in confirmation of written instruments, or allegations, or proof of debts, or of the execution of deeds, may take and receive the declaration of any person voluntarily making the same.

Voluntary oaths abolished.

5. By (s. 16) of the same statute, a declaration in writing by any attesting witness is to be sufficient to prove the execution of any will, codicil, deed or instrument in writing. By the 8 & 9 Vict. c. 48, bankrupts and the wives of bankrupts are to be examined before commissioners in bankruptcy without being sworn, but are to sign a declaration that they will make true answers. By the second section of the act, persons making false statements in the course of the examination are made liable to the penalties for perjury.

Declaration of attesting witness.

6. By the 55 Geo. 3, c. 184, affidavits not made for the immediate purpose of being filed or used in any court of law or equity, are liable to the stamp of 2s. 6d. for every sheet, or piece of paper, parchment or vellum, on which the same shall be written or authorized by law. It is presumed that declarations being substituted for affidavits will be liable to the same stamp duty. See 3 & 4 Vict. c. 34.

Affidavits exempt from stamp duty or otherwise.

No. XIX.

Affidavit on the Grant of Administration with the Will annexed.

No. XIX.
Administration.

A. B. (a) of &c. maketh oath and saith that the paper writing

(a) If it be a Quaker or Moravian, see Pref. s. 1, say "I A. B. of &c. being one of the people called Quakers [or 'one of the persuasion of the United

No. XIX.
Administration.

now produced by this deponent (b) for the purpose of being proved to the best of this deponent's belief (c) is and contains the last will and testament of C. D. late of in the county of deceased who as this deponent has been informed and believes departed this life on or about the day of last past and was buried on or about the day of next thereafter at in the same county (*or as the case may be*) and this deponent further saith that the personal estate and effects of the said testator to which he was entitled at the time of his death beneficially and without making any deduction or allowance by reason or on account of the debts or lawful demands of or upon the said testator are under the amount or value of £ .

Sworn (d) &c.

No. XX.

No. XX.
Of a Creditor.

Affidavit of a Creditor on applying for Letters of Administration where the Executor is abroad.

Obs. By the 38 Geo. 3, c. 87, s. 2, it is provided, that at the end of twelve calendar months after the death of a testator, if the executor is out of the jurisdiction of the courts, special administration may be granted upon the application of any creditor, next of kin or legatee, grounded upon an affidavit to the effect following :

A. B. of &c. (a) maketh oath that there is due and owing to him on bond [*or* "simple contract," *or* "account stated," *as the case may be*] from the estate and effects of late of deceased to the best of his belief the sum of £ (b) and

Brethren called Moravians'] do upon this solemn affirmation made according to the rites of my religion declare that " &c. If it be a Separatist, say, " I A. B. of &c. do in the presence of Almighty God solemnly sincerely and truly affirm and declare that I am a member of the religious sect called Separatists and that the taking an oath is contrary to my religious belief as well as essentially opposed to the tenets of that sect And I do also declare in the same solemn manner that I this affirmant did," &c.

(b) "By me this affirmant."

(c) "Of my this affirmant's belief."

(d) "Affirmed."

(a) As to the form where it is a Quaker, Moravian or Separatist, see *ante*, Pref. s. 1.

(b) Where it is a next of kin or legatee, instead of the affidavit of debt, say, "A. B. &c. maketh oath &c. that he is the next of kin of &c.," *or* "a legatee named in the will of" &c.

that C. B. the only executor capable of acting and to whom probate has been granted has departed this kingdom and is now out of the jurisdiction of her Majesty's courts of law and equity and that this deponent is desirous of (c) exhibiting a bill in her Majesty's Court of for the purpose of being paid his demand out of the assets of the said testator.

(Deponent.)

No. XX.
Of a Creditor.

No. XXI.

Affidavit by an Executor or Administrator of Deficiency of Assets, in order to obtain a return of Duty, under 55 Geo. 3, c. 184, s. 51.

No. XXI.
*By an Executor
or Adminis-
trator.*

A. B. of &c. maketh oath that probate of the last will of (testator) [or "letters of administration of the estate and effects of (intestate)"] deceased was [or "were"] granted to him and that the estate and effects of him the said &c. was sworn to be under the value of £ and a stamp duty of £ was paid thereon and this deponent further saith that the schedule hereunto annexed and subscribed by him doth contain a true and full account of the goods chattels and personal estate of to the best of this deponent's knowledge and belief and this deponent further saith that such goods &c. do not as he verily believes exceed the amount of and he hath actually paid debts justly due and owing from the deceased at the time of his death to the full amount of £ which being deducted from the value of the goods doth reduce the same to the amount of £ .

No. XXII.

Affidavit of the Execution of Deed of Submission to Arbitration.

No. XXII.
*Arbitration
(Deed of Sub-
mission).*

Obs. Before an award can be enforced under 9 & 10 Will. 3, c. 15, the submission must be made a rule of court, for which purpose there must be an affidavit of the execution of the deed of submission by one of the witnesses; and where there are several parties to the deed, it must be shown that all have executed the deed, *Antram v.*

(c) Where it is a next of kin or legatee "of administering to the estate and effects of &c. for the purpose of obtaining his share of the same," [or "of obtaining the legacy given to him by the said will."]

No. XXII.
Arbitration
(*Deed of Sub-*
mission).

Chace, 15 East, 209; and see *Biddel v. Dowse*, 6 B. & C. 255. As to the exemption from the stamp duty, see Pref. 6.

In the Q. B. (*or other court of which the submission is to be made a rule.*)

A. B. of &c. maketh oath and saith that he was present at the execution of the bond or obligation [*or "agreement," as the case may be*], hereunto annexed and made or expressed to be made by E. H. of &c. therein mentioned and did see him duly sign and seal and as his act and deed deliver the said bond or obligation and that the names E. H. and A. B. set and subscribed thereto are respectively the proper handwriting of the said E. H. and this deponent.

No. XXIII.
Award
(*Enlargement*
of Time).

No. XXIII.

Affidavit of Enlargement of Time.

Obs. An affidavit verifying the fact that the arbitrator has enlarged the time, according to the power given to him, and also that the defendant had notice of such enlargement, is necessary to ground an attachment upon for nonfulfilment of the award, *Davis v. Vass*, 15 East, 97.

In the Q. B. &c. (*see last precedent*).

A. B. of &c. maketh oath and saith that the time for making the award hereunto annexed was duly enlarged to the day of _____ last as appears by an indorsement on the said bond or obligation and the said award as he the said deponent verily believes was made within the time limited for making the same And this deponent further saith that at the time of demanding payment of the sum of £ _____ so awarded the said (*defendant*) had notice that the time for making the said award had been enlarged and that the said award was made as aforesaid.

Sworn &c.

No. XXIV.
Articles of
Clerkship,
(*Execution*).

No. XXIV.

Affidavit of the Execution of Articles of Clerkship.

Obs. 1. This affidavit must be made by one of the subscribing witnesses, and sworn before a judge of that court of which the attorney is admitted, within three months after the execution of the articles. There is the like restriction as to time on the assignment of articles.

2. As to affidavits in judicial proceedings, see Pref. s. 6.

A. B. of &c. maketh oath and saith that he this deponent did see H. H. gentleman one of the attornies of her Majesty's Court of Queen's Bench [*or* "Common Pleas"] at Westminster and T. F. of &c. severally sign and seal as their several acts and deeds in due form of law and deliver certain articles of agreement indented bearing date the day of last past and made between the said H. H. of the one part and the said T. F. of the other part whereby it was agreed that the said T. F. should well and truly serve the said H. H. as his clerk in the business profession and practice of an attorney of her Majesty's Court of Queen's Bench [*or* "Common Pleas"] at Westminster for and during the term of five years commencing from the day of the date of the said in part recited articles of agreement or clerkship And the same articles of agreement or clerkship were duly executed by them the said parties on the same day and year on which they bear date And this deponent further saith that the names of H. H. and T. F. set and subscribed opposite to the several seals affixed to the said in part recited articles of clerkship are of the several and respective handwriting of the said H. H. and T. F. and that the name J. K. thereto set and subscribed as one of the subscribing witnesses to the execution of the said articles of clerkship is the proper handwriting of him the said J. K. and that the other name A. B. thereto set and subscribed as the other subscribing witness to the execution thereof is the proper handwriting of him this deponent.

Sworn &c.

No. XXIV.
*Articles of
Clerkship,
(Execution).*

No. XXV.

Of Assignment of Articles of Clerkship.

Obs. As to the assignment of articles, see *preceding Affidavit*; and as to affidavits, see Pref. s. 3.

No XXV.
*Articles
(Assignment).*

A. B. &c. maketh oath &c. that he did see I. I. one of the attornies &c. K. L. of &c. and M. N. one other of the attornies of her Majesty &c. severally sign seal and as their several acts and deeds in due form of law deliver a certain deed or instrument in writing bearing date &c. and indorsed upon certain articles of agreement bearing date &c. (*here recite shortly the substance of the articles*) by which said deed or instrument the said I. I. and K. L. did vacate and make void the articles of agreement or clerkship And the said I. I. did assign and turn over the said

No. XXV.
Articles
(Assignment).

K. L. to the said M. N. to serve him as his clerk during the remainder of the aforesaid term of five years and the said M. N. did thereby agree to take him as his clerk during the remainder of the said term and that the same deed or instrument was duly executed by the said I. I. K. L. and M. N. on the same day and year on which it bears date *And* this deponent further saith that the names &c. (*as above*).

Sworn &c.

No. XXVI.
Articles
(Service under).

No. XXVI.

Of Service under Articles.

Obs. As to affidavits, see Pref. s. 1: and as to Quakers, see *first Affidavit*.

A. B. of &c. gentleman maketh oath and saith that he hath really and truly served and been employed by C. D. of &c. gentleman as his clerk in the practice of an attorney and solicitor for the full term of five years pursuant to the articles hereunto annexed *And* this deponent further saith that he did previous to last term affix the name and place of abode of him this deponent and also the name and place of abode of the said C. D. his master in the Queen's Bench Office and on the outside of the Court of Queen's Bench in Westminster and that he did also previous to the same term likewise enter the name and place of abode of the said A. B. in the book kept for that purpose at the chambers of each of the judges of her Majesty's Court of Queen's Bench.

Sworn &c.

No. XXVII.
Certificate
(verifying).

No. XXVII.

Affidavit verifying Certificate of Acknowledgment made by a Married Woman.

Contents of the affidavit.

Obs. 1. By R. G. H. T. 4 Will. 4, 1834, revoking and amending the Rules of Michaelmas Term, 1833, the following affidavit, except where the acknowledgment is taken elsewhere than in *England, Wales, or Berwick-upon-Tweed*, is directed to be made by some practising attorney or solicitor of one of the Courts at *Westminster*, or of one of the Counties Palatine of *Lancaster* or *Durham*, and in all cases it shall be deposed, in addition to the verification of the said certificate, that the deponent [*or if more than one person join in the affidavit*, "that one or more of the deponents"] knew the person or

persons making such acknowledgment, and that at the time of making such acknowledgment the person or persons making the same were of full age and competent understanding: and that one at least of the commissioners taking such acknowledgment, to the best of his knowledge and belief, is not in any manner interested in the transaction giving occasion for the taking such acknowledgment, or concerned therein as attorney, solicitor, or agent, or as clerk to any attorney, solicitor, or agent, so interested or concerned; and that the names and residences of the said commissioners, and also the place or places where such acknowledgment or acknowledgments are taken, shall be set forth in such affidavit; and that previously to such acknowledgment being taken, the deponent had inquired of such married woman (*or if more than one*, of each such married woman) whether she intended to give up her interest in the estate to be passed, and also the answer given thereto; and where any such married woman, in answer to such inquiry, declares that she intends to give up her interest without any provision, the deponent shall state that he has no reason to doubt the truth of such declaration, and verily believes the same to be true. And where any provision has been agreed to be made, the deponent shall state that the same has been made by deed or writing, or if not actually made before, that the terms of the intended provision have been reduced into writing; which deed or writing he verily believes has been produced to the said judge (master, *or* commissioners).

No. XXVII.
Certificate
(verifying).

2. AND IT IS HEREBY FURTHER ORDERED, that every affidavit shall state the parish or parishes, or place or several places, and the county or counties, in which the several premises, wherein any such married woman appears to be interested, shall by deed be described to be situate.

Affidavit must
state parish or
place, and
county.

3. AND IT IS HEREBY FURTHER ORDERED, that the affidavit shall be in the form hereunto annexed, subject to such variations as the circumstances of the case render necessary, or such affidavit may be made, where it is found convenient, by one of the said commissioners, with such variations in the form thereof as shall be necessary in that behalf.

Form of affi-
davit.

4. Affidavits of this description require to be stamped, being made in no suit, *Ex parte Branson*, 4 Scott, 539; see *Gen. Obs supra*.

Stamp.

In the Common Pleas

A. B. (a) of &c. in the county of gentleman one of the

(a) Where more than one join in the affidavit, "A. B. of &c. in the county of (*here state trade, profession or calling*), and C. D. of in the county of gentleman one of the attornies [*or 'solicitors'*] of the Court of severally maketh oath and say and first this deponent A. B. for himself maketh oath and saith that he knows M. the wife of R. L." As to the form in the case of Quakers, see *ante*, No. XIX. n. (a).

No. XXVII.

Certificate
(verifying).

attornies [*or* “solicitors”] of &c. maketh oath and saith that he knows M. the wife of R. L. (*a*) in the certificate hereunto annexed mentioned and that the acknowledgment therein mentioned was made by the said M. L. and the certificate signed by the judge [*or* “master” *or* “A. B. and C. D. the commissioners in the said certificate mentioned”] on the day and in the year therein mentioned at in the county of in the presence of this deponent and that at the time of making such acknowledgment the said M. L. was of full age and competent understanding and that the said M. L. knew that the acknowledgment was intended to pass her estate in the premises respecting which such acknowledgment was made (*b*) *And* this deponent further saith that previous to the said M. L. (*c*) making the said acknowledgment he this deponent inquired of the said M. L. whether she intended to give up her interest in the estates in respect of which such acknowledgment was taken without having any provision made for her in lieu of or in return for or in consequence of her so giving up her interest in such estates *And* that in answer to such inquiry the said (*d*) M. L. declared that she did intend to give up her interest in the said estates without having any provision made for or in consequence of her giving up such interest of which declaration of the said M. L. (*e*) the said deponent has no reason to doubt the truth and verily believes the same to be true (*f*) *And lastly* this deponent saith that it appears by the deed acknowledged by the said M. L. that the premises wherein

(*a*) If more than one married woman, “and L. the wife of R. S.”

(*b*) When the acknowledgment is not taken by a judge or master, add “*And* this deponent further saith that to the best of his deponent’s knowledge and belief neither of the said commissioners is [*or* ‘the said A. B.’ *or* ‘the said C. D. is not’] in any manner interested in the transaction giving occasion for such acknowledgment or concerned therein as attorney solicitor or agent or as clerk to any attorney solicitor or agent so interested or concerned.”

(*c*) If more than one married woman, say, “the said M. L. or L. S. making this acknowledgment he this deponent inquired of each of them the said M. and L. whether she” &c.

(*d*) *Or* “each of them the said M. L. and L. S. declared” &c.

(*e*) *Or* “of each of them the said M. L. and L. S.”

(*f*) *Or* “declared that a provision was to be made for her in consequence of her giving up her interest in such estates *And* this deponent further saith that before her acknowledgment was so taken he was satisfied and does now verily believe that such provision has been made by deed or writing (*or* ‘that the terms thereof have been reduced into writing’) *And* that such deed or writing has been produced to the said Judge [*or* ‘Master’ *or* ‘Commissioners’].”

she is stated to be interested are described to be in the parish or place (or "parishes or places") of _____ in the county (or "counties") of &c. (*as the case may be*)

No. XXVII.
Certificate
(verifying).

No. XXVIII.

Affidavit of a Debt.

No. XXVIII.
*Affidavit of a
Debt.*

Requisites of
the affidavit.

Obs. 1. An affidavit of a debt, so far as it concerns commercial or general purposes, ought, 1. To be made by a credible person, not one convicted of any felony, *Bland v. Drake*, 1 Chitt. 165; but see 7 & 8 Geo. 4, c. 28, as to the effect of a pardon, Dig. & Ind. p. i. PARDON. 2. By R. Gen. H. 2 Will. 4, reg. 1, s. 5, the addition of every person making an affidavit of debt must be inserted therein, and deponent describing himself as A. B., clerk to C. D., is not sufficient, *Daniels v. May*, 5 D. P. C. 83. This rule is a confirmation of an old rule, under which it was held that the affidavit must contain the state and degree of the plaintiff in order to hold the defendant to bail, *Jarrett v. Dillon*, 1 East, 18; but if it state the place where he carries on his business it is sufficient, and need not give his place of abode, *Haslope v. Thorne*, 1 M. & S. 103. 3. It is now settled (though formerly doubted) that it need not be made by the party himself, it being sufficient if made by any person who can swear to the existence of the debt, *Bland v. Drake*, *ub. sup.*, overruling *Claphamson v. Bowman*, 2 Stra. 1226; *Vanmorral v. Julian*, 1 Wils. 231; and the affidavit need not state that the deponent was connected with the plaintiff as agent or otherwise, *Anderson v. Morgan*, 4 Taunt. 231. 4. The affidavit must be positive as to the fact of the debt; stating "as appears by the plaintiff's ledger," and the like, is not sufficient, *Fowler v. Morton*, 2 B. & P. 48; but an executor or administrator may swear to the best of his belief, *Sheldon v. Baker*, 1 T. R. 84; *Lowe v. Farley*, 1 Chitt. 92. 5. The cause of action must be explicit; an affidavit of debt on an award must state the fact of submission to the award, and that the money was due on a day that is now past, *Anon.* 1 D. P. C. 5; so an affidavit of debt, founded on an agreement, must state the consideration for the agreement, *Walker v. Gregory*, 1 D. P. C. 24; and if for money paid, that the same was paid at the request, as well as on account of the defendant, *Marshall v. Davison*, 2 Tyrw. 315.

2. Affidavits of a debt come properly within the exemption from the stamp duty provided for by 55 Geo. 3, c. 184; see *ante* Pref. s. 6. Stamp.

A. B. of &c. (or "clerk &c." or "apprentice &c. to A. B.") maketh oath and saith that the bill or account hereunto annexed

No. XXVIII.
Of a Debt.

of goods or articles expressed to have been delivered to C. D. is a true copy or transcript of the ledger book of him the said A. B. or of his ("clerk" "apprentice &c.") entered by him the said deponent and that the goods were ordered by and delivered to the said C. D. by this deponent at or about the time in the said bill or account mentioned and which he verily believes the said C. D. received And further that he this deponent did on or about the day of deliver a true copy of the account from the said A. B. unto (*or "at the counting-house" or "dwelling-house of"*) the said C. D. and that he did then and there see the said C. D. who thereupon promised to pay the same forthwith (*or otherwise, as the case was*) and that he this deponent hath not nor any other person to his knowledge or belief received or been tendered the amount thereof (*or "has received the sum of £ and no more towards the amount thereof"*)

Sworn &c.

(*Deponent.*)

No. XXIX.

No. XXIX.
*Execution of
Deeds.*

*Affidavit of the Execution of the Memorial of a Deed by
one of the Witnesses.*

Required by
the Registry
Acts.

Obs. 1. This affidavit is required by the 2 & 3 Ann. c. 4, for the West Riding of Yorkshire; 5 & 6 Ann. c. 35, for the East Riding; 7 Ann. c. 20, for Middlesex; and 8 Geo. 2, c. 6, for the North Riding; see Dig. and Ind. p. i. tit. INROLMENT. By the 5 & 6 Will. 4, c. 62, the execution of a deed or will may be proved by a declaration instead of an affidavit, see Pref. s. 6.

2. As to whether this affidavit requires a stamp, see Pref. s. 6.

A. B. (*a witness to the execution of the memorial and of the deed memorialized*) of in the county of maketh oath and saith that he was present and did see the indenture bearing date &c. referred to in the memorial hereunto annexed duly executed by C. D. (*grantor*) (*or E. F. (grantee)*) of in the county of one of the parties to the same indenture And this deponent further saith that he was present and did see the memorial hereunto annexed duly signed and sealed by the said C. D. (*or E. F.*) And that the names of this deponent and of (*other witnesses to the memorial*) in the county of set and subscribed to the said memorial as the witnesses to the execution thereof by the said C. D. (*or E. F.*) are of the respective

proper handwriting of this deponent and of the said (*other witnesses*)

No. XXIX.
*Execution of
Deeds.*

(*Deponent A. B.*)

Sworn at the public office Southampton
Buildings the day of before me
G. H.

No. XXX.

Affidavit of Service of a Petition and Order.

No. XXX.
*Petition,
(Service).*

In Chancery

In the matter of T. B. a lunatic.

G. F. of &c. maketh oath and saith That he this deponent did on the day of instant personally deliver to M. B. cousin and next heir of the said T. B. and H. S. aunt of the said T. B. respectively a true copy of the petition and order thereon hereinafter mentioned which said petition appears to this deponent to have been preferred to the Lord High Chancellor of Great Britain by S. S. of &c. I. H. of &c. and W. T. of &c. devisees in trust for the said T. B. the lunatic named in the will of the said lunatic's father N. B. late of &c. and also persons appointed in and by the said will to have the care and custody of the said T. B. And it was thereby prayed that it might be referred to one of the Masters of the Court of Chancery to approve of one or more person or persons to have the care and custody of the person and estate of the said lunatic they giving such security as is usual in like cases And the said order appears to this deponent to have been made by the said Lord High Chancellor and bears date the &c. And by such order the said Lord High Chancellor directs all parties concerned to attend him in the matter of the said petition on the next day of petitions and notice thereof to be given forthwith.

Sworn &c.

No. XXXI.

Declaration to be made for the Allowance of Spoiled Stamps.

No. XXXI.
*Declaration,
(Spoiled
Stamps).*

Obs. As it is presumed that this is one of those official oaths or affidavits for which a declaration may be substituted, the following has been given in that form. See Pref. s. 2.

I T. M. of &c. gentleman in partnership with S. T. R. of the same place &c. attornies in her Majesty's Court of at

No. XXXI.
Declaration,
(Spoiled
Stamps).

Westminster do solemnly and sincerely declare That the following stamps *i. e.* three indentures at 35s. each one second of 15s. one second of 7s. all on parchment two affidavit stamps on paper of &c. five agreement stamps &c. amounting in the whole to £ are the property of me the said declarant and my said partner And that I this declarant and my said partner have paid the full value for the same and that they have been spoiled or become useless in our said profession and that we have not charged and do not mean to charge the same or any of them to any person or persons whomsoever And unless the same are allowed to me this declarant and my said partner I this declarant and my said partner will be losers to the full amount thereof.

Declared by the above-named declarant T. M. }
 the day of 18 before }

No. XXXII.
Declaration,
(Debt).

No. XXXII.

*Declaration of a Debt due to a Widow, Administratrix of
 her Husband.*

I E. G. of &c. widow and administratrix of all and singular the goods and chattels rights and credits which were of H. G. late of &c. merchant my late husband deceased at the time of his death do solemnly and sincerely declare That T. S. late of &c. merchant is justly and truly indebted unto me this declarant as administratrix as aforesaid in the sum of £ of lawful money of Great Britain for a total loss of £ *per centum* on the said T. S.'s subscription of £100 made and entered into before the date and suing forth of the said commission on a certain policy of insurance effected by the orders and for the account of the said H. G. in his lifetime on goods and merchandize belonging to the said H. G. shipped on board the ship bound on a voyage from to in which the said ship and her cargo in the prosecution of the said voyage was lost on the coast of as I this declarant have been informed and believe for which said sum of £ or any part thereof I this declarant have not nor to my knowledge or belief have or hath any other person or persons for my use received nor did the said H. G. in his lifetime or any other person or persons for his use to the knowledge and belief of me this declarant receive any satisfaction or security whatsoever save and except the said policies of insurance.

Declared &c. (see No. XXXI.)

No. XXXIII.

Declaration of the Execution of Deeds.

Obs. As to voluntary declarations in proof of the execution of deeds, see Pref. s. 5; and as to the stamp, see Pref. s. 6.

I A. B. of &c. do solemnly and sincerely declare that I this declarant did see the parchment writings or indentures hereunto annexed bearing date &c. and also one other writing bearing date &c. and made or expressed to be made between &c. sealed and delivered by C. D. &c. in the said writings named and that I the said declarant subscribed my name to each of the said writings as a witness to the execution and delivery thereof respectively

Declared &c.

No. XXXIII.
Declaration,
(Execution of
Deeds).

No. XXXIV.

Declaration of an attesting Witness to a Will.

Obs. As to declarations to be made by attesting witnesses, see Pref. s. 5; and as to the stamp, see Pref. s. 6.

I A. B. of &c. do solemnly and sincerely declare That I was present and did see C. D. late of &c. deceased in due form of law seal publish and declare his last will and testament in writing bearing date &c. and that I this declarant subscribed my name as a witness thereto And I this declarant do further declare that I do verily believe the parchment writing with the probate of a will thereto annexed under the seal of the Prerogative Court of the Archbishop of Canterbury to be a true copy of the last will &c. of the said C. D. deceased having compared the same with the draft from which such will so signed sealed and published as aforesaid was engrossed And I this declarant do further declare that I have heard and believed that the said C. D. departed this life on or about the day of 18

Declared &c.

No. XXXIV.
Declaration,
(Attesting
Witness).

AGREEMENTS.

- | | |
|---------------------------------------|--|
| 1. <i>Definition of an Agreement.</i> | 7. <i>Consideration for the Agreement.</i> |
| 2. <i>Parties to an Agreement.</i> | 8. <i>Construction of Agreements at Law and in Equity.</i> |
| 3. <i>Subjects of an Agreement.</i> | 9. <i>Penalty Clause.</i> |
| 4. <i>Form of an Agreement.</i> | 10. <i>Stamping Agreements.</i> |
| <i>Deeds and Parol Agreements.</i> | 11. <i>Different kinds of Agreements.</i> |
| 5. <i>Signing an Agreement.</i> | |
| 6. <i>Recitals in an Agreement.</i> | |

Definition of an agreement.

SECT. 1. An agreement, in its most extensive sense, is defined to be the consent of two or more persons in constituting or dissolving some legal obligation, and in that sense includes every species of assurance; but, in a more limited acceptance of the term, it implies any memorandum, articles or minutes, entered into between two or more persons, either to serve as a deed of itself, or as preparatory to some more formal instrument, 1 Bac. Ab. 67.

Parties to an agreement.

2. No one can enter into an agreement who has not discretion, or the power of using it; therefore idiots, lunatics, infants, married women, and persons under any duress or restraint, are in general incapable of contracting, Perk. 12, 16; 4 Co. 124; 5 ib. 119; Sheph. Touch. 39; *Harris v. Lee*, 1 P. Wms. 483; 1 Atk. 409; 1 Fonb. Eq. 68. But the law allows infants to make contracts, with power to vacate them if they prove prejudicial; and a contract by an infant for necessities is absolutely binding, Co. Litt. 172 a; 2 Sid. 109; 1 Lev. 86; *Truman v. Hurst*, 1 T. R. 41. And by the 9 Geo. 4, c. 14, s. 5, agreements or promises made in infancy must be confirmed by writing when the party comes of full age. By the 1 Geo. 1, c. 10, for the maintenance of the poor clergy, agreements entered into by guardians for infants and idiots were to be valid; but now, by 11 Geo. 4 & 1 Will. 4, c. 65, s. 26, such agreements may now be made by guardians in case of infants, with the approbation of the Court of Chancery, and in the case of lunatics by their committees, with the consent of the Lord Chancellor. And by 6 & 7 Will. 4, c. 115, s. 1, guardians, committees and husbands are empowered to enter into agreements for making inclosures for infants, lunatics and femes covert. In many cases a married woman is competent to contract as if she were sole, *Norton v. Turvill*, 2 P. Wms. 144; *Grigby v. Cox*, 1 Ves. 517; 1 Fonb. Eq. 91. The executors and administrators of a party are usually named in an agreement; but this is not necessary in order to bind his assets, as his representatives are, by intendment of law, included in his person, *Hyde v. Skinner*, 2 P. Wms. 270. But the word "heirs" must not be omitted when the real estate of the party is intended to be bound, Plowd. 439; 2 Saund. 136.

3. Generally speaking, every kind of right or interest, whether of a real, personal, or mixed nature, may be the subject of an agreement; but it is requisite that it be within the power of the party contracting. And it must be such as is not forbidden by the rules of religion and morality, or by the laws of the land. An agreement may either be executed at the beginning, as where money is paid for the thing agreed for, or it may be executory, where it is to be done at some future time.

Agreements.

Subjects of an agreement.

4. Every agreement, to be effectual, ought to be full and complete, and so framed as to express with clearness and precision the stipulations and terms of the contract. Agreements ought to be in writing, otherwise, by the Statute of Frauds, 29 Car. 2, c. 3, will not be valid. And now the 9 Geo. 4, c. 14, s. 7, has extended the provision of 29 Car. 2 to all executory contracts. Agreements need not be under both the hand and seal of the parties. A letter takes an agreement out of the statute, not only in consideration of marriage, but also in respect to lands, *Ford v. Compton*, 2 B. C. C. 32. Where agreements are under the hand and seal of the parties, they are, as to the subject-matter, sometimes called *special contracts* or *specialties*, and as to the instrument, *deeds*; but where they are verbal, or only in writing under the signature of the parties, they are termed *parol agreements*, or absolutely agreements. The former kind of agreements are binding on the heir of the parties if named, but the latter on the representatives only, 2 Wms. Saund. 7, n.; 4 ib. 136; *Wilson v. Knubley*, 7 E. 128. An action might formerly be sustained upon a contract under seal at any period of time; but by the 3 & 4 Will. 4, c. 42, s. 3, actions of debt or covenant on bonds, or other specialties, must be brought within twenty years after cause of action arises; actions upon parol agreements must be brought within six years after the cause of action arises, *Jones v. Pope*, 1 Wms. Saund. 37. So an agreement by parol cannot dispense with, alter, or control a deed, *Sellers v. Beckford*, 8 Taunt. 31, S. C.; 1 B. More, 460.

Form of an agreement.

Deeds.

Parol agreements.

5. Signing is, by the Statute of Frauds, one requisite to the validity of an agreement; but as a signature by one of the parties will be binding only on the party signing, it is important for both parties to sign, in order to give full efficacy to the contract, 2 Ch. Ca. 164; *Champion v. Plummer*, 1 N. Rep. 254; *Cooper v. Smith*, 15 East. 103; *Phillimore v. Barry*, 1 Campb. 513; *Symmons v. Want*, 2 Stark. 371. The signature of an authorized agent, even though not authorized in writing, but verbally only, will bind his principal, *Mortlock v. Buller*, 10 Ves. 311; *Wilson v. Hart*, 7 Taunt. 295; *Clinan v. Cooke*, Sch. & Lef. 31, 32. A cross made by one who is not able to write, is a sufficient signing; and if a man be in the habit of printing or stamping his name, he will be considered to have signed by his printed name, 1 Sugd. Pow. 6th edit. 30; *Saunderson v. Jackson*,

Signing an agreement.

Agreements. 2 B. & P. 238; *Schneider v. Norris*, 2 M. & S. 286. Where an agreement is signed by an attorney or authorized agent, he must sign in the name of his principal, not in his own name, 2 Ld. Raym. 1418; *White v. Cuyler*, 6 T. R. 176; *Wilks v. Bach*, 2 East, 142; *Coles v. Tricothich*, 9 Ves. 234. The signature required by the statute need not be in any particular part of the instrument, 1 Sugd. V. & P. 10th edit. 180 *et seq.* But it has been held, that inserting the name in the middle of a writing cannot have the effect of a legal signature, *Hawkins v. Holmes*, 1 P. Wms. 770; *Stokes v. Moore*, 1 Cox, 219. As to the attestation or signing in the presence of witnesses, this is necessary for preserving the evidence of the deed, 1 Lev. 25; 1 Sid. 37. And in regard to deeds made in pursuance of powers, where the power requires attestation, a deed will be void at law, where there is no mention of such attestation, 1 Sugd. Pow. 6th edit. 302.

Attestation of
an agreement.

6. Recitals are not an essential part of a deed, but they are nevertheless proper, as they serve to explain the meaning of the witnessing part, and show the full intention of the parties, and the state of the property proposed to be dealt with. Any important variance between the recitals and the witnessing part of an instrument would be a reason for suspicion that the instrument was open to question on the ground of fraud or mistake. In the case of a release (not a conveyance) the recitals are of still greater importance, as the witnessing part will not be held to extend to matters which the recitals do not show an intention to comprise.

Recitals in an
agreement.

7. Some consideration or other is absolutely necessary to support an agreement, otherwise it is held to be a *nudum pactum*, and void at law, Plowd. 308; Dy. 336; *Jones v. Ashburnham*, 4 East, 455; *Parker v. Bayliss*, 2 B. & P. 73. So if the consideration be the doing that which the law prohibits, or which is offensive to decency or good morals, it will be void, *Martyn v. Blithman*, Yelv. 197. But any reasonable consideration, however small, will be deemed sufficient, Dy. 272; 1 Roll. Abr. 22, 23; *Williamson v. Clements*, 1 Taunt. 523. And if the agreement be under seal, no consideration need appear on the face of the deed; but parol agreements are not allowed to be conclusive evidence of a sufficient consideration, *Pel-lans v. Mierop*, 3 Burr. 1670; *Rann v. Hughes*, cited 7 T. R. 350, n.; 1 Fonbl. Eq. 342, 347.

Consideration
for an agree-
ment.

8. The construction of deeds and agreements is the same in equity as at law, but the performance required in a court of equity and that of law is different. At law, a covenant must be strictly and literally performed; in equity, it must be really and substantially performed, *Eaton v. Lyon*, 3 Ves. 692. Equity will relieve against a strict performance upon equitable circumstances, where there is no wilful neglect and misconduct, and will also enforce the performance of fair and reasonable contracts, even although they be by parol, where the

Construction of
agreements in
equity and at
law.

party wants the thing in specie, 2 Freem. 268; 2 Vern. 455: *Gunter v. Halsey*, Amb. 586: *Errington v. Annesley*, 2 B. C. C. 443. But if the contract can be and is intended to be compensated by damages, courts of equity will not interpose, 1 P. Wms. 570; *Capper v. Harris*, Bunb. 135. Agreements.

9. In contracts of an executory kind, a clause is usually inserted, stipulating for the payment of a sum of money, either by way of penalty or for liquidated or ascertained damages, in case of violating any of the articles of the contract by either party. The latter mode, by which the parties themselves fix the amount of damages, is to be preferred, as it prevents the necessity of a reference to a jury for that purpose, *Astley v. Welden*, 2 Bos. & Pull. 346. But the intention of the parties must be clearly expressed, for the mention of the word "penalty" or "penal sum," precludes the court from considering it as liquidated damages, *Smith v. Dickenson*, 2 B. & P. 630; *Astley v. Welden*, *ub. sup.* It is, however, worthy of observation, that, notwithstanding the above clause, equity will compel a specific performance of a contract where redress in the shape of damages, or otherwise, is an inadequate remedy, *Hobson v. Trevor*, 2 P. Wms. 191; *Goring v. Nash*, 3 Atk. 186. Penalty clause.

10. An agreement cannot be produced in a court of justice as evidence of a contract, unless it be stamped. Whenever, therefore, a letter is relied on as evidence, it must first be stamped before it be read, *Ford v. Compton*, 2 B. C. C. 32. But memorandums or acknowledgments rendered necessary by 9 Geo. 4, c. 14, are not to be deemed agreements within the meaning of any of the Stamp Acts. By the 13 & 14 Vict. c. 97, every agreement or memorandum under hand only, where the matter thereof shall be of the value of £20, is charged with a duty of 2s. 6d., and when it contains 2160 words or upwards, with a duty of 2s. 6d. for every entire quantity of 1080 words over and above the first 1080 words, with a further progressive duty of 2s. 6d. But when several letters are offered in evidence to prove any agreement, they are chargeable only with the duty of 2s. 6d., although they may contain more than twice the number of 1080 words and upwards. Every deed, or every instrument under hand and seal, not otherwise charged, requires a stamp of 1l. 15s., and a further progressive duty of 1l. 5s. for every entire quantity of 1080 over and above the first 1080. Articles of agreement under seal cannot be given in evidence, unless stamped with a deed stamp, *Robinson v. Drybrough*, 6 T. R. 317. Stamping.

11. The above remarks will suffice to show the distinction between agreements when they are under seal, and the informal instruments which are properly so called. As to agreements for particular purposes, see further AGREEMENTS *for a lease*, PARTITION, PURCHASE, Different kinds of agreements.

Agreements. &c. And as to regular deeds, see further BONDS, CONDITIONS, COVENANTS, DEEDS, LEASES, PURCHASE DEEDS, &c.

Agreement with an agent, broker or factor, see *post*, AGREEMENTS, (*Principal and Agent*).

—◆—
No. XXXV.

No. XXXV.
*Building a
House.*

Agreement for Building a House.

Obs. 1. Where a contract is made to build a house according to a certain plan, and the owner makes deviations from the plan, this does not vacate the contract, but subjects the owner to the payment of any additional charges occasioned by such deviations, *Pepper v. Barland*, Peak's N. P. C. 103; *Godfrey v. Thomas*, Holt's N. P. C. 236.

2. The completion of a contract for building a house may be enforced by the heir on the death of his ancestor, and the executors must pay the builder whatever remains due out of the personal estate, unless it be otherwise stipulated, 2 Vern. 322; 3 P. Wms. 223; Cas. Eq. temp. Talbot, 83, n.

Articles of Agreement made entered into and concluded this
day of in the year of the reign &c. and in the year
of our Lord 18 Between (*Builder*) of &c. of the one part and
Perties. (*Owner*) of the other part as follow The said (*B.*) for the con-
siderations hereinafter mentioned doth hereby for himself his
heirs (*a*) executors and administrators covenant promise and
agree with and to the said (*O.*) his executors administrators and
assigns that he the said (*B.*) his executors &c. shall and will at
Builder agrees to build. his or their own proper costs and charges within the space of
calendar months next after the date hereof in a good and work-
manlike manner erect build and set up one house or messuage
upon the ground belonging to the said (*O.*) at together
with the several erections and buildings set forth in the schedule
hereunder-written according to the draft or scheme hereunto
annexed subject to the approbation of the surveyor of the said
(*O.*) (*b*) And will build the same with such stone brick timber
and other materials as the said (*O.*) shall find and provide for the
same And it is further agreed by and between the said parties
Provision in case of delay. That if the said (*B.*) his executors or administrators shall be

(*a*) As to the naming of heirs, executors and administrators, see AGREEMENTS, Pref. s. 2.

(*b*) If it be so agreed, say instead of the above, "And also shall and will at his or their own proper costs find and provide good proper and sufficient materials of all kinds for erecting the said building subject to the approbation of the said (*O.*) or his surveyor."

No. XXXV.
*Building a
House.*

guilty of any neglect or delay in the building finishing or completing the said house and the said (O.) shall give or leave notice in writing of such neglect or delay at the place of abode of him the said (B.) his executors or administrators or upon the said piece of ground intended to be built upon that then and in such case it shall and may be lawful for the said (O.) his executors or administrators within the space of days after such notice given or left as aforesaid in case the said (B.) his executors or administrators shall not proceed on the completion of the said works to employ a sufficient number of workmen to finish and complete the said house and shall and may deduct and retain to himself or themselves all such sums of money and expenses as he or they shall pay or incur in the completion of the said house And that the said (B.) his executors or administrators shall not in any manner do or cause to be done any act matter or thing whatever to prevent the persons so employed by the said (O.) his, &c. from finishing and completing the said house And the said (O.) doth hereby for himself his heirs executors administrators and assigns agree with and to the said (B.) his executors administrators and assigns that he the said (O.) his heirs executors or administrators shall and will well and truly pay or cause to be paid unto the said (B.) his executors, &c. the sum of £ of lawful money of Great Britain in manner following that is to say the sum of £ part thereof at the laying of the chamber floors the sum of £ other part thereof at the covering in and the sum of £ in full for the work when completely finished And that he the said (O.) his &c. shall and will at his or their own proper costs and charges find and provide all the stone brick and timber and other materials necessary for the building of the said house *Provided always* and it is hereby agreed and declared by and between the parties hereto That in case the said (O.) his executors &c. shall direct any more to be done in or about the said buildings and premises than what is contained in the said schedule hereunder written that then and in such case the said (O.) his executors administrators or assigns shall pay or cause to be paid to the said (B.) his executors &c. so much money as such extra work shall be worth at a reasonable valuation And lastly it is hereby agreed by and between the said parties to these presents That if any dispute or difference shall happen to arise between them touching the said house and buildings or the money to be paid for the same according to the admeasurement and value thereof in case the same shall be ad-

Owner agrees
to pay,

to find ma-
terials,

and allow for
alterations.

Arbitration
clause.

No. XXXV.

*Building a
House.*

measured or valued or touching or concerning any alteration or addition or any other matter or thing whatsoever relating to the work hereby contracted to be done That then and in such case it shall be left to the determination and award of three indifferent persons one to be named by the said (*B.*) his &c. and the other by the said (*O.*) his &c. and the third by the said two persons so to be named immediately after such dispute shall arise And the said parties hereto do hereby covenant promise and agree with and to each other that they the said parties shall and will severally stand to abide perform and keep the award and determination of the said three persons so as the same be made in writing under the hands and seals of the said arbitrators within one calendar month next after such reference And (*a*) for the due observance of the stipulations by them mutually entered into each of them the said (*B.*) and (*O.*) by these presents doth bind himself unto the other of them in the penal sum of £ by way of liquidated damages In witness whereof the said (*B.*) and (*O.*) have put their hands the day and year first above written.

(Builder) (L.S.)

(Owner) (L.S.)

No. XXXVI.

Agreement for Building a Ship.

No. XXXVI.

*Building a Ship.*Covenant to
build,

Articles &c. Witness that the said (*Builder*) shall and will at his own proper costs and charges in all things build within the space of calendar months from the date hereof one good ship of not less than tons and not exceeding tons burthen with such materials and to be furnished and provided in such manner as in the schedule No. I. hereunto annexed is more particularly set forth And when the said ship is completed he the said (*B.*) will let the same to him the said (*Merchant*) for the said several voyages at such freight and demurrage and upon such terms as in schedule No. II. hereunto annexed is particularly mentioned And for that purpose the said ship shall at the proper costs and charges of the said (*B.*) be from time to time repaired refitted and provided in all things according to the terms hereinbefore mentioned and according to the usage and customs of merchants And the said (*B.*) or other managing owner and the commander thereof shall and will from voyage to voyage enter

and let to hire
when finished.

(a) As to this penal clause, see AGREEMENTS, Pref. s. 9.

into a charter-party to the said (*M.*) upon the terms in the same schedule mentioned and in such charter-parties such further stipulations and provisions as are necessary and reasonable shall from time to time be inserted *And* the said ship until she has performed such several voyages shall not be employed upon any other service or upon any other occasion whatever except in the service of the said (*M.*) without the consent in writing of him the said (*M.*) *And* that during such time as the said ship is in the service of the said (*M.*) the said (*B.*) his executors administrators and assigns and all and every other the commanders owners and officers and crew of the said ship shall conform themselves in the equipment of the said ship or otherwise to all such lawful and reasonable orders and instructions as shall be given from time to time by the said (*M.*) his executors administrators or assigns *Provided always* that in case of breach of these agreements aforesaid or any of them by or on the part of the said (*B.*) it shall be lawful for the said (*M.*) his executors &c. the said ship wholly to reject from his service and also to recover satisfaction for the damages occasioned by any such breach of agreement or to seek any other such remedies as he or they shall think fit *In witness whereof* &c.

No. XXXVI.
Building a Ship.

Ship not to be otherwise employed.

Owner will conform to directions.

Schedules referred to—

No. I. Dimensions of the ship and inventory of stores.

II. The charter-party.

—◆—
No. XXXVII.

Agreement between a Manufacturer or other Person with a Carrier, to explain and restrict the Provisions of the 11 Geo. 4 & 1 Will. 4, c. 68.

No. XXXVII.
Carrier.

Obs. By the Carriers' Act, 11 Geo. 4 & 1 Will. 4, c. 68, the common law liability of carriers is much qualified; but as in that act it is provided that it should not affect any special contracts, it is frequently necessary to enter into express agreements suited to the particular circumstances of the case. By the 8 & 9 Vict. c. 42, canal companies are authorized to carry as common carriers upon their respective canals, rivers or navigations, and to sue and be sued as carriers; and the provisions in force relating to common carriers are made to apply to such companies. By "The Railway Clauses Consolidation Act, 1845," 8 & 9 Vict. c. 20, s. 89, it is enacted, that nothing in that act or in the special act should extend to charge or make liable the company further or in any other case than where stage-coach proprietors

No. XXXVII. and common carriers would be liable, nor should extend in any degree
Carrier. to deprive the company of any protection or privilege which common carriers or stage-coach proprietors might be entitled to, but on the contrary, the company should at all times be entitled to the benefit of every such protection and privilege.

Agreement to
 carry any
 kind of goods.

Except above a
 certain value.

Memorandum of an Agreement entered into the day of
 in the year of our Lord between (*Carrier*) of &c.
 of the one part and (*Manufacturer &c.*) of the other part *Wit-*
nesseth That he the said (*C.*) for himself his executors &c. doth
 hereby agree with the said (*M.*) that he the said (*C.*) shall and
 will at all times take charge of and convey all goods of whatever
 description which shall be offered and committed to the charge
 of him the said (*C.*) by the said (*M.*) and will truly and safely
 deliver the same to any persons to whom they may be addressed
 whether the goods be specified or enumerated or otherwise and
 whatever may be the value of such goods provided the same do
 not exceed the sum of £ and if exceeding that value then
 after the rate of £ *per centum* for the alleged excess in
 value *And* the said (*M.*) doth hereby agree with the said (*C.*)
 that he said (*M.*) his executors &c. shall and will from time to
 time as and when any goods are committed by him the said (*M.*)
 to the charge of the said (*C.*) pay or cause to be paid to the said
 (*C.*) his executors &c. such per-centage as aforesaid together with
 the usual charge for the same in respect of weight and distance
In witness &c.

No. XXXVIII.
Coachmaker.

Coachmaker
 agrees to pro-
 vide coach,

No. XXXVIII.

Agreement for the Hire of a Coach or Chariot.

Memorandum &c. That the said (*Coachmaker*) doth agree
 with the said (*Employer*) that he the said (*C.*) his executors and
 administrators shall and will at his or their own proper charge
 on or before the day of next provide (*a*) a new hand-
 some well-built chariot with a good hammercloth and harness for
 one pair of horses with all other accoutrements to the reasonable
 good liking of the said (*E.*) for the period of determinable

(*a*) If the agreement be with a livery-stable-keeper for the hire of a pair of horses say—

“Two good strong gentle and active horses well matched and a good skilful and civil driver to the reasonable good liking of the said (*E.*) and in case the said driver or horses be disabled then he the said (*L.*) shall provide other like horses or driver as aforesaid.”

nevertheless as hereinafter mentioned after the rate of for No. XXXVIII.
each month *And* that he the said (C.) his executors &c. shall *Coachmaker.*
and will at their own proper charge keep the said chariot and and to keep the
harness &c. in good and proper order save and except any sashes same in repair.
or glass which may be accidentally or otherwise broken while
the said chariot is in the use of the said (E.) (a) *And* in con- Employer
sideration of the premises the said (E.) doth hereby agree that agrees to pay
he the said (E.) his executors administrators or assigns shall and stipulated hire.
will on the day of in each month during the subsis-
tence of this agreement well and truly pay or cause to be paid
unto the said (C.) his executors administrators or assigns the
sum of £ as aforesaid *Provided always* that in case the Dissolution of
said (E.) depart this life during the subsistence of these presents agreement.
the same shall be considered as at an end and determined on the
expiration of next thereafter and that the said (E.) or his
executors &c. shall not be obliged to pay more than the propor-
tion of the month which may then have elapsed *And* it is here-
by further agreed by and between the said parties that on either
of them the said (E.) or (C.) giving to the other days' (or
months') notice of his intention to put an end to this agreement
the same shall after the expiration of the said notice absolutely
cease and be void.

In witness &c.

Agreement to accept a Composition—see post, COMPOSITION.

No. XXXIX.

Agreement to enter into Copartnership at some future Time. No. XXXIX.
Copartnership.

Obs. 1. It seems that a court of equity will decree the specific per-
formance of a contract for a copartnership, provided it is to continue
for a definite period, *Buxton v. Lister*, 3 Atk. 383; *Anon.* 2 Ves.
629; but not otherwise, *Walker v. Harris*, 1 Anstr. 245.

2. In an agreement of this kind should be inserted all conditions
and covenants which are not usual, as for instance, in regard to sur-
vivorship, since the good-will of a profession, if not of a trade, will
survive on the death of either party, *Farr v. Pearce*, 3 Madd. 74.
This ought therefore to be provided for by express stipulation. (As
to copartnership, see further COPARTNERSHIP.)

(a) If it be so agreed say—

“Or except such damages as may happen to the said chariot by overturning or
other violence, whether under the care of the coachman or servant of the said (E).”

No. XXXIX. *Articles &c.* Between A. B. of &c. of the one part and C. D. of &c. of the other part *Witness* That the said A. B. doth hereby agree to take the said C. D. into copartnership with him in his trade or business of for the space of seven years and to assign to him a moiety of his interest in the house wherein the said trade is now carried on the said copartnership to commence from the day of next ensuing on the terms and conditions following that is to say *That* the said C. D. shall pay to the said A. B. on or before the said day of the sum of £ as a premium or fee to be admitted into the said copartnership *That* the stock in the said trade shall be valued on or before the day of by two indifferent persons one to be chosen by the said A. B. and the other by the said C. D. and in case they cannot agree by an umpire to be chosen by the said arbitrators *That* the said C. D. shall advance a sum equal to half the amount of the said valuation to be paid within the space of calendar months after the commencement of the said copartnership *That* a proper deed or instrument in writing shall be prepared within the space of six weeks from the date of these presents at the joint expense of the said parties in which deed it shall be provided and declared *That* the capital stock shall consist of £ and that if either party be minded to bring in a further capital the said joint stock shall be liable to make good the same with interest after the rate of five *per centum per annum* *That* neither of the parties shall at any time during the continuance of the said term be concerned in any other trade *That* all the insurable part of the stock shall be insured at the expense of the joint trade *That* no apprentices shall be taken nor servants dismissed or hired without the mutual consent of the said parties *That* the premiums with apprentices shall be added to the joint stock *That* books of accounts shall be kept in the usual manner and be open to the inspection of the said parties *That* true and just accounts of the joint trade shall be made half yearly and the surplus proceeds be divided equally and proportionally between them *That* neither of the parties shall apply the partnership monies to his own use nor buy and sell accept and give bills compound and release debts nor do any other thing to affect the joint trade without the consent of the other *That* if either of the said parties shall happen to die before the expiration of the said term no benefit of survivorship shall accrue to or be taken by the other of them *That* disputes shall be referred to arbitration and all other covenants

No. XXXIX.
Copartnership.

Parties.

Terms of agree-
ment.

Deeds of co-
partnership to
be executed.

Covenants and
clauses to be
inserted in the
deed.

provisoes and stipulations clauses and agreements shall be inserted as are usual in deeds of copartnership of a like kind *In witness &c.* No. XXXIX. Copartnership.

—◆—
Agreement for Dissolution of Copartnership,—see post,
COPARTNERSHIP (*Dissolution*).

—◆—
No XL.

Agreement by a Person to pay a Debt contracted during Infancy.

No. XL.
*Debtor and
Creditor
(Infant).*

Obs. By the 9 Geo. 4, c. 14, s. 5, no person can be charged upon any promise, made after full age, to pay a debt contracted during infancy, unless the same be in writing; and by the same act, s. 8, such promise is exempted from stamp duty.

I A. B. of &c. being now of full age do hereby promise and agree with and to (C.) of &c. that in consideration of the debt contracted with him during my infancy being a just and *bonâ fide* debt I will pay him the sum of £ the amount thereof after the expiration of months from the day of
Witness my hand

A. B.

—◆—
No. XLI.

Agreement for an Exchange.

No. XLI.
Exchange.

Obs. As to the nature of an exchange, see EXCHANGE. As to the stamps, see AGREEMENT, Pref. s. 10.

Articles of &c. Between A. B. of S. of the one part and C. D. of &c. of the other part *Whereas* the said A. B. is seised to him and his heirs (a) of certain lands situated at in the county of and the said C. D. is also in like manner seised to him and his heirs of certain messuages or tenement and land situate &c. And whereas the said A. B. and C. D. have agreed to make Recital of title.

Agreement to
make ex-
change;

(a) If the premises are copyhold, recite “ *Whereas* the said A. B. is seised to him and his heirs according to the custom of the manor of certain copyhold or customary lands situate &c. And the said C. D. is also seised of &c.” If leasehold, recite “ *Whereas* the said A. B. is possessed of a certain messuage or tenement and premises situate &c. and held by a certain indenture of lease bearing date on or about the day of 18 and made between [*lessor*] of the one part and said A. B. of the other part subject to the rents and covenants therein contained on the part of the lessee or tenant to be paid done and performed And the said C. D. is also &c.”

No. XLI.
Exchange.
to furnish ab-
stract;

to execute con-
veyances mu-
tual;

to receive
rents, &c.

an exchange of their respective premises and hereditaments (a) *Now these Presents witness* That each of them the said A. B. and C. D. each for himself his respective heirs executors and administrators doth hereby promise and agree with and to the other of them that he shall and will on or before the day of next at his own expense make or deliver or cause to be made and delivered unto the other of them a full complete and perfect abstract of his title to the said premises to be exchanged (b) *And* if the counsel of the respective parties shall be of opinion that each of them the said A. B. and C. D. has a good title to his respective premises that each of them the said A. B. and C. D. shall and will on or before the day of now next ensuing execute at the expense of the other of them such conveyances and assurances together with all necessary covenants as shall by their respective counsel be reasonably advised the said C. D. likewise receiving the sum of £ for equality of exchange (c) *And lastly* that each of the said parties shall be entitled to the rents and profits of the said premises so to be to them respectively assured from the day of now next ensuing up to which time all taxes rates and other charges whatsoever payable in respect to the said premises shall be paid by the party conveying the same *In witness &c.*

No. XLII.
Exchange.

No. XLII.

Agreement by Trustees to convey a Parcel of Land by way of Substitution for the Rights of Common.

Obs. As to exchanges of this nature, see 4 & 5 Will. 4, c. 30.

Article of &c. Between (*Trustees*) of the first part (*Owner of the land*) of the second part and A. B. of the third part Whereas by indentures of lease and release bearing date respectively the days of 18 the release being made or expressed to be made between the said (O.) and M. his wife of the one

(a) If the premises are leasehold, omit the words "hereditaments."

(b) If the premises are leasehold, say "but in this abstract the said A. B. or C. D. shall not be required to show his lessor's title." See AGREEMENTS *for a Lease*, s. 6.

(c) If it be so agreed say "*And* it is hereby mutually agreed between the said parties that it shall be expressly declared in the said conveyances that neither of them the said A. B. and C. D. shall re-enter on the lands conveyed in exchange in consequence of any defect of title." See EXCHANGE, Pref. s. 2.

part and the said (T.) of the other part and by virtue of a common recovery suffered in or as of term 18 in which the said (O.) and M. his wife were vouched The manor of M. in the parish of and divers lands tenements and hereditaments therein described situate &c. were conveyed and assured by the said indenture of release limited to the said (T.) their heirs and assigns *In trust* to sell the same and to stand possessed of the monies to arise by such sale or sales *Upon* and for the trusts interests and purposes therein expressed and declared of and concerning the same *And* by the in part recited indenture it was declared and agreed That it should be lawful for the said (T.) and the survivor of them his heirs and assigns at any time or times previously to the sale of the whole of the premises thereby made saleable as aforesaid with the consent and by the direction of the said (O.) his heirs or assigns to be testified in writing under his or their hand or hands to convey surrender or assure any of the same hereditaments or such of them as should remain unsold under the trusts thereinbefore contained for or in lieu of or by way of substitution or exchange for any other hereditaments or for such other equivalent or recompense in lands tenements or hereditaments as should be thought expedient and to make and execute all such conveyances and assurances as should be requisite and necessary to effect and complete such exchanges as are thereinbefore mentioned *And also* to receive any sum or sums of money by way of equality of exchange *And whereas* no sale hath hitherto been made in pursuance of the said in part recited indentures of lease and release *And whereas* there are within the said manor divers commons and waste lands which are subject to the rights of common belonging appurtenant or attached to divers messuages lands tenements or hereditaments in the parish aforesaid and it is in the contemplation of the said (O.) and his (T.) with the consent of the respective proprietors of the said messuages lands tenements or hereditaments to apply for an Act of Parliament for dividing allotting and inclosing the same commons and waste lands *And whereas* the said A. B. is seised of or entitled to the inheritance in fee simple of and in all those &c. (*parcels*) and the said A. B. is also entitled to right of common for or in respect of the said piece or parcel of land and hereditaments hereinbefore described in over or upon the said commons and waste lands within the said parish and manor of aforesaid *And whereas* the said (T.) with the consent of the said (O.) testified by his being a party to and signing and

No. XLII.

Exchange.

Recital of conveyance to trustees;

power of sale;

that there has been no sale.

Recital that lands are subject to rights of common;

that A. B. is entitled to certain lands and right of common.

Agreement to exchange.

No. XLII.
Exchange.

Testatum.

sealing these presents have agreed with the said A. B. to convey unto the said A. B. and his heirs the piece or parcel of land and hereditaments hereinafter described being part of the hereditaments comprised in the said in part recited indentures of lease and release and the inheritance thereof in fee simple in lieu of and by way of substitution for the rights of common and other rights belonging or appurtenant or attached to the said piece or parcel of lands and hereditaments hereinbefore described and such allotment or allotments as shall at any time or times hereafter be made in lieu of or by way of compensation for such rights of common &c. *Now these Presents witness* That in consideration of the agreements hereinafter contained on the part of the said A. B. they the said (T.) do hereby for themselves as trustees as aforesaid and their heirs and assigns and with the consent and by the direction of the said (O.) testified as aforesaid agree with the said A. B. his heirs and assigns that they the said (T.) their heirs and assigns shall and will at any time or times hereafter at the request costs and charges of the said A. B. his heirs and assigns make do and execute all such acts conveyances and assurances as shall be requisite for conveying and assuring unto and to the use of the said A. B. his heirs or assigns or otherwise as he or they shall direct or appoint all that &c. with the appurtenances [except all rights of common] and also that they the said (T.) shall and will henceforth until such assurances shall be made stand seised of and interested in the same *In trust* for the said A. B. his heirs and assigns *And these Presents further witness* That in consideration of the agreements hereinbefore contained on the part of the said (T.) he the said A. B. doth hereby for himself his heirs executors and administrators agree with the said (T.) their heirs and assigns that he the said A. B. his heirs and assigns and all other the necessary and proper parties shall and will at any time or times hereafter at the request costs and charges of the said (T.) their heirs cestuique trusts or assigns make do and execute all such acts matters and things as shall be requisite and necessary for conveying and assuring unto and to the use of the said (T.) their cestuique trusts or assigns or otherwise as they shall direct or appoint free from incumbrances in fee simple of all rights of common and other rights appertaining to the said piece or parcel of land and hereditaments hereinbefore described and also in the meantime and until such conveyances and assurances shall be made and executed he the said A. B. shall stand seised of and interested in the

said commons and other rights of common and allotments as aforesaid *In trust* for the said (T.) as trustees as aforesaid their heirs and assigns *In witness &c.*

No. XLII.
Exchange.

—◆—
Agreement for Freight—see post, SHIPPING.
—◆—

No. XLIII.

Agreement to relinquish a Business in Favour of another.

No. XLIII.
Good-will
(Business).

Obs. 1. The good-will of a business has been frequently recognized in courts of equity as a valuable interest, *Kennedy v. Lee*, 3 Mer. 441; *Cook v. Collingridge*, Jac. 607; and so under certain circumstances in courts of law, *Ex parte Farlow*, 2 B. & Ad. 341; *S. P., R. v. Hungerford M. Company*, 4 B. & Ad. 592; but not where the profits arise from confidence in the personal skill of the party, as in the case of surgeons or attornies, *Farr v. Pearce*, 3 Madd. 78; *Spicer v. James*, cited Collyer on Part. 82.

A good-will is property.

2. In *Lyburn v. Warrington* an agreement to give up a trade was held not to require an *ad valorem* stamp, not being considered as distinct substantive property; but an agreement for the sale of goods, as well as good-will for a given sum, requires a stamp, *South v. Finch*, 3 Bing. N. C. 506; *S. C.* 4 Scott, 293; see further, *post*, ASSIGNMENT of Good-Will.

Stamp.

Memorandum of an agreement made this day of &c.
Between I. S. of &c. widow and relict of W. S. late of &c. deceased of the first part I. N. W. of &c. of the second part and (*Surety*) of &c. of the third part as follow The said I. S. in consideration of the agreement hereinafter contained on the part of the said I. N. W. doth hereby for herself her executors and administrators promise and agree to and with the said I. N. W. his executors and administrators *That* she the said I. S. shall and will on the day of next relinquish the business of

I. S. agrees to relinquish her business;

lately used and carried on by the said W. S. her late husband deceased and now continued to be carried on by the said I. S. at aforesaid to and in favour of the said I. N. W. And also in due form of law effectually transfer and assign to him the said I. N. W. all the stock fixtures utensils and implements in trade used in and belonging to the said business at such prices and under such valuation and settlement as hereinafter mentioned And also shall and will grant a lease to him the said I. N. W. of the dwellinghouse shops warehouse and premises

to grant lease of premises.

No. XLIII.
Good-will
(Business).

I. N. W. agrees
 to take business,
 fixtures, &c.

to accept lease.

wherein the said I. S. now resides and wherein the said business is now carried on for the term of years from the day of instant at or under the yearly rent of payable quarterly clear of all taxes and deductions whatsoever *And* the said I. N. W. doth hereby for himself his executors and administrators promise and agree to and with the said I. S. her executors and administrators to accept and take the said stock fixtures utensils and implements in trade and pay and secure to be paid in manner as hereinafter expressed such a sum of money for such stock fixtures utensils and implements in trade and also the good-will of the said business as the same shall be valued at and agreed on by two arbitrators to be chosen one by the said I. S. and the other by the said I. N. W. or in case they shall disagree in making such valuation Then such a sum of money as shall be settled by a third person to be chosen as umpire by them the said arbitrators *And also* that he the said I. N. W. shall and will accept and take a lease of the said dwellinghouse shop and premises upon the terms aforesaid and at his own expense execute the lease and a counterpart thereof in which said lease shall be contained all usual and proper covenants and particularly a covenant for payment of rent as hereinbefore mentioned *And* shall and will on the day of next pay or &c. unto the said I. S. one third part of the amount of such valuation as aforesaid *And* shall and will give the joint and several bond of himself and the said (S.) as a security for the payment of the remainder of the sum at which the said stock &c. shall be valued by four equal successive annual instalments the first annual instalment to be paid on the day of 18 together with interest after the rate of 5*l.* per cent. per annum upon the remainder of the sum at which the said stock &c. shall be valued as aforesaid So that upon payment of each annual instalment of the principal the whole of the interest then due shall be paid to the said I. S. *And* the said (S.) in consideration of the premises and as surety for and in behalf of the said I. N. W. his son shall and will pay to the said I. S. the sum so agreed to be paid by the said I. N. W. as the third part of the amount of such valuation as aforesaid on the said day of instant *And also* shall and will join with the said I. N. W. in such security as aforesaid for the payment of the residue of the sum at which such stock fixtures utensils implements and good-will shall be valued with interest as aforesaid *In witness &c.*

AGREEMENTS TO GUARANTEE.

- | | |
|---|--|
| 1. <i>Guarantee must be in Writing.</i> | 3. <i>Representation of Character.</i> |
| <i>Exceptions to the Rule.</i> | 4. <i>Stamp.</i> |
| 2. <i>Consideration must appear.</i> | |

SECT. 1. By the 4th section of the Statute of Frauds an agreement to pay the debt of another, must, in order to give a cause of action, be in writing, *Saunders v. Wakefield*, 4 B. & A. 595; but if a party actually make payments for another, a responsibility may be inferred from the circumstances, without any promise in writing, *Shaw v. Woodcock*, 7 B. & C. 73; and if a party admits a binding guarantee by paying money into court, on a count charging him with it, it will not be necessary to prove a written promise, *Middleton v. Brewer*, 1 Peake, 15.

Guarantee must be in writing.

Exceptions to the rule.

2. The writing must contain the consideration for the promise as well as the promise itself, *Saunders v. Wakefield*, *ub. sup.*; therefore a promise to pay for goods to be supplied in future is good, because the supplying the goods is the consideration; but a promise to pay for goods already furnished is bad for want of such consideration, *Wood v. Benson*, 2 Cr. & J. 94; *S. C.* 2 Tyrw. 74; unless it be stated that the thing done in favour of a third party has been done at the guarantor's request, *Payne v. Wilson*, 7 B. & C. 423.

Consideration must appear.

3. By the 9 Geo. 4, c. 14, s. 6, representations relating to the conduct, credit, ability, &c. of another, which are in the nature of guarantees, must be in writing, in order to sustain an action against the party making the representation.

Representations of character.

4. A guarantee will require a stamp or otherwise, according as a stamp is required for the principal contract or otherwise, *Warrington v. Furber*, 8 East, 242; *Watkins v. Vince*, 2 Stark. 368; but representations as to a person's credit are expressly exempted by the 9 Geo. 4, c. 14, from all stamp duty.

Stamp.

No. XLIV.

Agreement to guarantee the Payment of Goods furnished to a third Person.

No. XLIV.
Payment of
Goods
(third Person).

In consideration of your agreeing to supply (a) my son with goods in the way of his trade as a _____ upon _____ months' credit I hereby promise to be answerable for the amount

(a) If the promise be for goods already supplied, it will be necessary, in order to show the consideration, to say, "of your having at my request supplied," &c., see *ante*, sect. 2.

- No. XLIV. at the end of that period or at any time afterwards not exceeding the sum of £ within one calendar month after demand (a).
Payment of Goods
(third Person).

AGREEMENTS FOR A LEASE.

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. <i>Agreement to be in Writing.</i> 2. <i>Not a Substitute for a Lease.</i> 3. <i>Agreement binding on Tenant in Tail, but not his Issue.</i>
 <i>On Husband, but not on Wife.</i>
 <i>On the Wife also.</i>
 <i>On Remainder-man.</i>
 <i>On an Alien Artificer.</i>
 <i>On a Copyholder.</i> 4. <i>Specific Performance.</i> 5. <i>Agreements ought to be explicit.</i> | <ol style="list-style-type: none"> 6. <i>Covenants not to assign.</i>
 <i>To repair.</i>
 <i>To pay Rent.</i>
 <i>To pay Taxes.</i>
 <i>For Production of Lessor's Title.</i> 7. <i>Duration of Term.</i> 8. <i>Usual Covenants.</i>
 <i>Not to carry on Trade.</i>
 <i>As to intervening Accidents.</i> 9. <i>Exemption from Stamp Duty.</i> |
|---|---|

Agreement to be in writing.

SECT. 1. An agreement for a lease, unless for a term not exceeding three years, and for which the rent reserved is at least two thirds of the real value, is required by the Statute of Frauds, 29 Car. 2, c. 3, to be in writing, and signed by the party to be charged therewith, or his agent legally authorized.

2. Parties are frequently let into possession under such an agreement, and allowed to continue in possession without any more formal instrument being executed; but the practice has given rise to much litigation. A tenant holding under such an agreement has no security for his possession, as he is always liable to be evicted in an action at law, and the owner has no remedy by distress for non-payment of rent, but is driven to his action for use and occupation, unless rent has already been paid, which creates a tenancy from year to year, *Hamerton v. Stead, ub. sup.*; *Mann v. Lovejoy*, 1 Ry. & Mood. N. P. 355. Formerly an agreement for a lease was often construed to be an actual lease, which gave rise to much litigation and occasioned many rather conflicting judgments, especially upon the point as to whether a reference to a future lease was sufficient to prevent the instrument from taking effect as a present demise. By the act 8 & 9 Vict. c. 106, s. 3, all leases required by law to be in writing, made after the 1st of October, 1845, are void at law unless made by deed. This puts an end to all difficulty upon this subject, and the agreement under hand only will now only operate as an agreement, however worded.

(a) If the guarantee be given to a mercantile firm, it will be necessary to add "And this promise shall not be affected by any change in the firm of your house," otherwise it will be inoperative in case there is a change in the firm, *Strange v Lee*, 3 East, 484.

3. An agreement for a lease will in many cases not be equally binding on the parties as a lease would be. An agreement for a lease by tenant in tail under the 32 Hen. 8, c. 28, although binding on him, will not be binding on his issue, if he die without perfecting the agreement, 1 Ch. Ca. 171; 1 Lev. 239; Prec. Chan. 278; *Hinton v. Hinton*, 2 Ves. 634. So an agreement by husband and wife seised in right of the wife under the same statute will not, it is apprehended, be binding on the wife or her heirs in the event of the husband dying before the execution of the lease, because the statute (which authorizes leases only) must be strictly construed, Cowp. 267; 2 Freem. 224; 1 Rop. Husb. & W. 96. If, however, a husband possessed of a term of years in right of his wife, enters into an agreement for an under-lease, and dies before the execution of the lease, such an agreement will, it seems, be binding on the wife, because terms of years are not within the statute, *Stead v. Craigh*, 9 Mod. 42; *Druce v. Denison*, 6 Ves. 385. An agreement for a lease, under a leasing power, will be good against the remainderman, provided it is a contract to grant such a lease as the power warrants, *Campbell v. Leach*, Ambl. 749; *Shannon v. Bradstreet*, 1 Sch. & Lef. 72; *Blore v. Sutton*, 3 Mer. 237. Although leases to alien artificers are void by the 32 Hen. 8, c. 16, s. 13, yet it has been held, that if an alien artificer occupies a house under an agreement, an action for use and occupation will lie against him, 1 Saund. 8, n. 1. Although a copyholder cannot, by the custom of most manors, grant a lease for a longer period than a year, yet a mere agreement to grant a lease, if the lord will give his licence, has been held not to work a forfeiture, 3 Keb. 638; *Doe dem. Coore v. Clare*, 2 T. R. 739.

For a Lease.

Agreement binding on tenant in tail, but not on his issue.

On husband, but not on wife.

On the wife also.

On remainderman.

On an alien artificer.

On copyholder.

4. As to parol agreements for a lease, courts of equity will, notwithstanding the Statute of Frauds, enforce specific performance, where by so doing they discourage fraud and perjury, which it was the object of the statute to prevent, 1 Eq. Ca. Ab. 19; 2 Ch. Ca. 135; 1 Vern. 151; 2 Freem. 268.

Specific performance.

5. Agreements for a lease should be clear and explicit on all material points. This is so much the more important as it has been expressly decided that nothing can be added by parol to an agreement which is reduced into writing, 1 Sugd. V. & P. 10th ed. 218. Where an agreement omits to specify the term or number of years for which the lease is to be granted, or if the rent be not specified, or the time when the term is to commence is omitted, or there is no mention respecting the payment of taxes, no parol evidence can be adduced to supply the omission, *Clinan v. Cooke*, 1 Sch. & Lef. 22; *Woollam v. Hearn*, 7 Ves. 221; *Pym v. Blackburne*, 3 Ves. 34; *Rich v. Jackson*, 4 B. C. C. 514; *The Marquis Townsend v. Stangroom*, 6 Ves. 334, n. So in an agreement for

Agreements ought to be explicit.

- For a Lease.* a building lease, the nature of the building must be specified, or the agreement cannot be enforced, *Moseley v. Virgin*, 3 Ves. 184.
- Covenants not to assign. 6. A covenant against assigning or under-letting is not deemed a usual covenant, and must therefore be expressly stipulated in the contract, if it is intended to be inserted in the lease, *Henderson v. Hay*, 3 B. C. C. 632; *Vere v. Loveden*, 12 Ves. 179; *Church v. Brown*, 15 Ves. 258. So under a covenant to repair, a lessee will be liable to rebuild if a house is burnt down, unless the clause be added, "damage by fire or tempest, or other inevitable accidents excepted," *Bullock v. Dommitt*, 6 T. R. 650; *Pym v. Blackburne*, 3 Ves. 34. It is now usual to insert a covenant for insurance by the lessee, which obviates this question; but a tenant will still be liable under his
- To repair. covenant to pay rent, although the house is burnt down, unless it be stipulated in the contract that there should be a suspension of rent in case of accidents by fire, *All. 27*; *Monk v. Cooper*, 2 Stra. 763; *Belfour v. Weston*, 1 T. R. 312; *Baker v. Holzappel*, 4 Taunt. 45; *Holzappel v. Baker*, 18 Ves. 115. And the tenant has no equity to compel his landlord to expend the money received from an insurance office in rebuilding, *Leeds v. Cheetham*, 1 Sim. 146; his only remedy in that case being to give notice to quit, *Pindar v. Ainsley*, cited 1 T. R. 312; *Pym v. Blackburne*, *ub. sup.* A reservation of rent "free from all and all manner of taxes" is now held to extend to the land tax and all taxes subsequently imposed, *Bradbury v. Wright*, Dougl. 602; *Amfield v. White*, 1 R. & M. 246; see 5 & 6 Vict. c. 35. Where an exception is intended to be made, it ought to be expressly stipulated in the agreement. An agreement for a lease contains no implied engagement for general warranty of the land, nor for delivery of an abstract of the lessor's title, *Gwillim v. Stone*, 3 Taunt. 433; *Temple v. Brown*, 6 ib. 60. The right of the lessee to inspect the lessor's title is however admitted in all cases, *Waring v. Mackreth*, Forr. 138; except in the case of a bishop, *Fane v. Spenser*, 2 Madd. 438; and specific performance of an agreement will not be enforced when the title is not clearly made out, a lessee being considered as a purchaser *pro tanto*, *Fildes v. Hooker*, 2 Mer. 424. But as in many cases lessors may object to produce their title, and in others it may be of great importance to the lessee to be assured of the title of his lessor, care should be taken to make this a part of the contract wherever the interests of either party require it.
- To pay rent.
- To pay taxes.
- For production of lessor's title.
- Duration of term. 7. On the principle that deeds ought to be construed most in favour of the grantee, it has been decided, that where an agreement contains a power to determine a lease at the end of seven, fourteen, or twenty-one years, it shall be in the power of the lessee to determine, and not of the lessor, unless it be expressly so stipulated, *Dann v. Spurrier*, 3 B. & P. 399; *Doe v. Dixon*, 9 E. 15 *Price v. Dyer*, 17 Ves. 363.

8. Under the clause "usual covenants" are to be understood such as are usual in reference to the nature of the property, the term "usual" being the same as "reasonable," "fair." Where, in an agreement for a lease, it is stipulated that it shall contain "such covenants as are usual in leases of lands," &c., in the neighbourhood, it appears that a court of equity will enforce specific performance, *Boardman v. Mostyn*, 6 Ves. 467. As a school has been held to come under the general clause, "not to carry on any trade," it must be expressly stipulated, if any exception is to be made. Likewise, as it appears doubtful whether, if a house be destroyed before the tenancy commences, a person shall be bound by his contract, it is advisable to make provision for this event in the agreement, *Phillipson v. Leigh*, 1 Esp. 397.
9. A memorandum or agreement for granting a lease or tack at rack rent, under the yearly rent of 5*l.*, is exempted from the usual agreement stamp: but it has been held that such an agreement is not within the exception, if the interest agreed for be a beneficial one, *Doe v. Boulcot*, 2 Esp. 595. (As to Leases, see further, *post*, LEASES.)

For a Lease.

Usual covenants.

Not to carry on any trade.

As to intervening accidents.

Exemption from stamp duty.

No. XLV.

Agreement for the Lease of a House.
(General Precedent.)

No. XLV.

Lease of a House.

- Articles of &c.* Between (lessor) of &c. of the one part and (lessee) of &c. of the other part whereby the said (lessor) agrees by indenture of lease to be executed on or before day next ensuing to demise and let unto the said (lessee) All that messuage or tenement with the coach-house stable garden &c. (Here describe parcels particularly.) To hold the same to the said (lessee) his executors and administrators from day next ensuing for the term of years (a) at the yearly rent of £ clear of all taxes parliamentary parochial or otherwise (b) and payable quarterly at the four usual festivals In which lease shall be contained covenants on the part of the said (lessee) to pay the rent (c) to repair the premises (d) and to
- (a) "Determinable at the end of seven fourteen or twenty-one years." And if it be so agreed, add "at the will as well of the said [lessor] as of the said [lessee]." Sect. 7.
- (b) "Except the land-tax or sewers-rate," &c. (as the case may be). Sect. 6.
- (c) "Yearly and every year during the said term unless the house should be burnt down or destroyed by any inevitable accident." Sect. 6.
- (d) It is usual to insert the exception, "damages by fire tempest and other inevitable accidents excepted." Sect. 6.

Parties.

Lessor agrees to demise.

Term.

Rent.

Covenants on the part of the lessee to pay rent.

Proviso for determining the lease.

Suspension of rent.

Lessee not to rebuild.

No. XLV.
*Lease of a
 House.*

To insure.
 To rebuild.
 To repair.

Covenants on
 the part of the
 lessor.

Expense of pre-
 paring agree-
 ments and
 lease.

deliver up the same at the end of the said term in good and tenantable repair (a) *And also* to insure the said premises from loss by fire during the said term in one of the insurance offices in London or Westminster to be approved of by the said (*lessor*) for the sum of £ *And also* to rebuild or repair the said premises if destroyed or damaged by fire or otherwise *And also* not to assign (b) or underlet the said premises without the licence of the said (*lessor*) with all other usual (c) and reasonable covenants and a proviso for the re-entry of the said (*lessor*) his heirs and assigns in case of non-payment of the rent for the space of days after either of the said days of payment or of the non-performance of the covenants (d) *And* that there shall also be contained in the said lease a covenant on the part of the said (*lessor*) his heirs executors and administrators for quiet enjoyment by the said (*lessee*) his executors and administrators of the said premises during the said term upon payment of the rent and performance of the covenants (e) *And* (f) it is hereby agreed by the said parties hereto that the expense of preparing these precedents and the said lease and a counterpart thereof shall be paid and borne by the said parties equally *And* (g) *lastly* it is mutually agreed by and between the parties hereto that the destruction of the said premises by fire or other cause before the execution of the said lease shall not (or “shall,” as case may be) in anywise alter or vacate this contract.

(a) If the covenant to insure be omitted, and the above exception be inserted, then add “except as last excepted.”

(b) As to this covenant, see sect. 6. *And also*, if it be so agreed, add “nor carry on nor suffer to be carried on upon the said premises any kind of trade,” or “any offensive or noisy trade,” &c. See sect. 6.

(c) As to usual covenants, see sect. 8.

(d) *And* if it be a public-house, add “and also a like proviso for the re-entry of the said [*lessor*] in case the said [*lessee*] shall suffer the said premises to be converted into a private house or shop without the consent in writing of the said [*lessor*] for that purpose first obtained.” This is now so general a stipulation in such leases that it has been held that it would be included under the words “all usual” covenants, *Bennett v. Womack*, 7 B. & C. 627.

(e) As to the production of the lessor’s title, see sect. 6.

(f) Or, as more usual, “the said [*lessee*] doth hereby agree to accept such lease as aforesaid and to execute a counterpart thereof and to pay the expense of these presents and also of the said lease and counterpart.”

(g) See sect. 6.

In witness whereof (a) the said parties have hereunto set their hand the day of 18

No. XLV.
Lease of a House.

No. XLVI.

Agreement for the Lease of a Farm.
(General Precedent.)

No. XLVI.
Lease of a Farm.

Articles of &c. Between &c. (see *last precedent*) The said (lessor) doth hereby agree to grant and the said (lessee) to accept a lease of *All that* farm and lands belonging to the said (lessor) situate &c. *To hold* the same for the term of years from the day of now last past at the yearly rent of clear of &c. to be paid half yearly on the day of and the day of the first payment to be made on the day of now next ensuing *And* the said indenture of lease shall contain the following covenants on the part of the said (lessee) that is to say *To keep* the tillage of the said lands in due course of husbandry and to manage the same in a good and husbandmanlike manner *Not to sow or set* more than acres of the said premises with potatoes carrots cabbages or other vegetables except turnips half of which at least are to be fed off and not carried off *To keep and preserve* the buildings gates and fences belonging to the said premises in good and sufficient repair during the said term [except the same be damaged by fire or any other inevitable accident] *To cleanse and scour* yearly roods of hedges and ditches where it is most wanted *Not to grub up* destroy or injure any of the trees growing on the said premises *Not to sell* any straw hay or manure during the said term *To give* a fresh coat of manure to every acre of the arable land once in years and to every acre of the pasture land once in years *To allow* the said (lessor) and his gamekeeper and bailiffs to come upon any part of the said grounds hereby demised at any time he or they may think proper for the purpose of hunting shooting coursing or killing of game (*add covenant to insure, not to assign, for re-entry on non-payment of rent, &c. as in the last precedent*) *And also* the following covenants on the part of the said (lessor) That the said (lessee)

Covenants in the lease on the part of the lessee.

Covenants on the part of the lessor.

(a) If the agreement be entered into by the agent of either party, say "the said [lessor] or [lessee] has hereunto set his hand by the said [agent] his attorney lawfully constituted." [As to signing agreements, see AGREEMENTS, s. 5].

No. XLVI.
*Lease of a
 Farm.*

may at all times dig marl and clay for the improvement of the lands and also sufficient gravel to keep the roads in repair *And also* that he may cut underwood and brushwood and lop pollard-trees above the age of for reasonable estover and as much rough timber as may be needful for the repairs of the said premises *And also (covenant for quiet enjoyment, as in the last precedent).* *In witness &c.*



Agreement by Trustees for letting Premises during the Minority of a Child, see post, LEASES.



No. XLVII.
*To Let Fur-
 nished House.*

No. XLVII.

Agreement to Let a Furnished House or Apartments.

Obs. A covenant that the landlord may distrain for rent is not necessary in an instrument of this kind, as it is held that a distress may be had upon any goods of the tenant, as well for furnished as unfurnished lodgings, *Newman v. Anderton*, 2 N. R. 242.

Memorandum of an agreement Between (lessor) of &c. of the one part and (lessee) of &c. of the other part as follows *That* the said (*lessor*) agrees to let and the said (*lessee*) to take *all that* messuage or dwelling-house situate &c. (*or "all those the first and second floors belonging to &c."* *as the case may be*) *together* with all the furniture fixtures crockery and all other things mentioned and comprised in the schedule hereunder written for the space of months to be computed from the date of these presents at the rent of £ per quarter (*or "month"*) [to be paid quarterly (*or "monthly"*)] *And* the said (*lessee*) agrees that at the expiration of the said months he the said (*lessee*) shall and will deliver up the said dwelling-house (*or "first and second floors &c."*) *together* with the fixtures and furniture as aforesaid in as good a condition as the same now are reasonable wear and tear thereof excepted and shall and will replace any of the crockery and china or other utensils that shall be broken or otherwise damaged. *In witness &c.*

The schedule or inventory referred to in the above agreement.



No. XLVIII.

Agreement for a Building Lease or Building Leases.
(General Precedent.)

No. XLVIII.
Building Lease.

Articles of &c. as follow that is to say First the said (*lessor*) in consideration of the rents and covenants hereinafter mentioned doth hereby agree with the said (*lessee*) his executors administrators and assigns That when and so soon as the said messuages or tenements hereinafter mentioned shall be built and covered in the areas thereof formed and the foot and carriage ways and pavements finished as hereinafter is mentioned to the approbation of the surveyor of the said (*lessor*) then he the said (*lessor*) shall and will by good and sufficient indentures of lease to be prepared by the solicitor of the said (*lessor*) at the costs and charges of the said (*lessee*) grant and demise unto the said (*lessee*) his executors administrators and assigns *All that* piece or parcel of ground &c. situate &c. which said pieces or parcels of ground are respectively delineated in the plan hereunto annexed and are therein marked with letters A A A &c. and also the several messuages or tenements to be erected and built thereon with their appurtenances for the term of ninety-nine years to be computed from next ensuing at the several rents following that is to say for the ground whereon the six houses are as hereinafter agreed to be erected within three years from 18 at the rent of a peppercorn for the first three years and at the several yearly rents to be apportioned as hereinafter is mentioned amounting together in the whole to the yearly rent or sum of £ during the remainder of the said intended term And for the ground whereon the six houses are as hereinafter agreed to be erected within four years from &c. And for the ground &c. (*here set out as before, varying in the numbers of houses, years and rents*) the same rents amounting in the whole to the sum of £ to be paid quarterly clear of the land tax sewers rate and all other taxes rates assessments and impositions whatsoever parliamentary parochial or otherwise which the said premises are or may hereafter be liable to (a) in consideration whereof the said (*lessee*) doth for

Parties.

Agreement to grant leases at certain periods.

Parcels.

Term.

Rents.

Payable quarterly, clear of all taxes.

(a) If it be so agreed, say, "And further that the said (*lessor*) his heirs or assigns shall at his own expense within days from the date hereof furnish the solicitor of the said (*lessee*) with an abstract of his title to the said pieces or parcels of land and also permit him to inspect the deeds and evidences thereof

No. XLVIII.
Building Lease.

Agreement by
lessee to build
and cover in
certain mes-
suages,

conformably to
the plan,

with good ma-
terials;

to make areas;

to slate the
roofs;

to make foot-
ways and pave-
ments;

to pave car-
riage ways.

Apportionment
of rents;

himself his executors administrators and assigns covenant promise and agree with and to the said (*lessor*) his heirs and assigns in manner following that is to say that he the said (*lessee*) his executors or administrators shall and will at his and their own proper costs and charges under the inspection and to the approbation of the surveyor of the said (*lessor*) well and substantially build and cover in on the said pieces or parcels of ground second-rate messuages or tenements within the respective periods following that is to say six messuages or tenements on the piece or parcel of ground &c. (*here set out the buildings on the several pieces or parcels of ground, and the times when they are to be built and covered in*) which said messuages or tenements shall be built and finished conformably in every respect to the plan and elevation drawn in the margin of these presents and the several floors or stories thereof shall be of the several heights in the clear following that is to say the basement story feet &c. and they shall be feet in front and feet in depth *And also* that the said houses shall be built with hard bricks and all other materials equally good and shall be carried up and continued in every respect agreeably to the Act of Parliament for building houses in the cities of London and Westminster *And* the said (*lessee*) his executors or administrators shall and will make areas to the said houses feet wide in the clear and inclose the same with a Portland stone kirb and iron rails *And* shall slate the roofs of the houses and close board the same and make good lead or iron water pipes to convey the water into the drains *And also* make a footway to the said several houses feet in width and pave the same with good Yorkshire paving and a granite kerb *And also* pave the carriage-way in front of the said houses *And* it is hereby further agreed that the said rent shall be apportioned and divided in the leases so to be granted as aforesaid at the rate of shillings per foot on the front of each house unless the said (*lessor*) his heirs or assigns and the said (*lessee*) his executors or administrators shall agree that the same shall be otherwise apportioned *And* the said (*lessee*) doth also hereby agree to accept such leases to be granted as aforesaid and to execute counterparts thereof and to pay the expenses of preparing these presents

so far as may be requisite to show the authority of him the said (*lessor*) to grant the said leases in consideration whereof, &c." As to this clause, see AGREEMENTS for a Lease, sect. 6.

and the said leases and counterparts (*a*) And in the said leases shall be contained the following covenants on the part of the said (*lessee*) that is to say to complete the said messuages or tenements in a substantial and workmanlike manner with all proper fixtures and fastenings to the same Also to pay the said rent and the land tax and all other taxes rates assessments and impositions whatsoever payable in respect of the said premises hereby agreed to be demised as aforesaid Also to repair amend support and keep the same premises at all times during the said term with or without notice from the said (*lessor*) his heirs or assigns in good and substantial repair Also to paint the external wood and iron work of the same premises twice in oil colours every fourth year Also to insure the premises for the full value of so much thereof as can be damaged by fire in some public office of insurance from fire in London or Westminster and to keep the same so insured during the said term and to produce and show to the said (*lessor*) his heirs or assigns or his or their steward agent or receiver of rents for the time being from time to time the receipts given by or on the behalf of such office acknowledging the payment of the premiums on the policy whereby the same premises are to be insured for the succeeding year And also in case any of the dwelling-houses erections or buildings should be destroyed by fire to rebuild or substantially repair the same according to the original plan Also to pay a fair and just proportion of all expenses and charges for renewing or repairing pavements renewing cleansing or repairing walls gutters pipes drains and watercourses which shall be used in common by the occupier of the demised premises and the occupiers of any other messuages or dwelling-houses already erected or hereafter to be erected on any part of the now estate of the said (*lessor*) or of any other person near or adjoining thereto Also to leave the premises at the end of the said term hereby agreed to be demised in good and substantial repair together with all marble and other chimney-pieces mantle-pieces hearths covings jambs foot-pieces and slabs sash and other windows casements window-shutters doors locks keys bolts bars and all other fastenings whatsoever also marble and other water-closets cisterns and things thereunto

No. XI.VIII.
Building Lease.
Covenants in leases.
To finish the buildings;
to pay rent and taxes;
to repair;
to paint;
to insure;
to rebuild in case of fire;
to contribute towards repairing pavements, &c.;
to leave premises in good repair.

(*a*) Sometimes, instead of enumerating the covenants, it may be only necessary to say, "All such covenants, provisoes and agreements as are inserted in the lease granted by the said [*lessor*] to A. B. &c. except &c." (*as the case may be*).

No. XLVIII.
Building Lease.

To permit lessor
 to survey the
 premises.

belonging and all wainscot partitions fixed presses dressers shelves drawers pipes pumps posts pales and rails and other fixtures fixed or fastened to the premises or which shall be found thereon or on any part thereof during the last seven years of the said term *Also* to permit the said (*lessor*) his heirs or assigns and his or their respective agents surveyors and workmen to enter upon the said premises hereby agreed to be demised at any time or times during the said term for the purpose of surveying the same and examining if any and what repairs are or may be wanting and to repair within three calendar months to the approbation and satisfaction of the surveyor for the time being of the said (*lessor*) every defect which shall be found upon such survey and of which notice in writing shall be given at or upon the said premises *Also* to permit the said (*lessor*) his heirs or assigns or their respective agents surveyors and workmen to enter into and upon the said premises or any part thereof at any time or times during the last seven years of the said term for the purpose of taking a schedule or schedules of the fixtures thereon or upon any part thereof *Also* to prevent the said (*lessee*) his executors administrators or assigns from cutting maiming or injuring any of the principal timbers or walls of the said building or from letting or converting the same into any shop for trade, or suffering any open or public show of business therein without the licence of the said (*lessor*) his heirs or assigns in writing for that purpose first had and obtained and from committing or suffering any annoyance to the other lessees or occupiers of any other messuages or dwelling-houses lands and hereditaments of or belonging to the said (*lessor*) his heirs or assigns near or adjoining to the said premises hereby agreed to be demised *Also* a clause for re-entry on non-payment of the rent days after each day of payment And all other clauses covenants and agreements usual or necessary to be inserted in leases of the like kind *And also* a covenant on the part of the said (*lessor*) his heirs or assigns for the quiet enjoyment of the premises hereby agreed to be demised against any person or persons claiming under him or them the said (*lessee*) his executors administrators and assigns paying the rents and performing the covenants and agreements hereby on his part agreed to be paid done and performed.

In witness &c.



No. XLIX.

*Agreement from the Lessee to demise Ground held by him
under the foregoing Agreement.*

No. XLIX.
Under-Lease.

Articles of Agreement made and entered into Between (*lessee*) Agreement to let
of &c. of the one part and (*under-lessees*) of &c. of the other
part as follow The said (*L.*) in consideration of the rent and
covenants hereinafter agreed to be paid and performed doth
hereby agree to let unto them the said (*U.*) and each of them
their respective executors administrators or assigns when and as
soon as they shall have erected and built the messuages and tene-
ments hereinafter covenanted by them to be erected and he the
said (*L.*) shall be lawfully enabled thereunto to grant and execute and grant lease.
to them a good and valid lease or demise by indenture of *All*
that &c. as the same is more particularly described in the plan
drawn in the margin of these presents with all ways &c. and
appurtenances whatsoever to the said premises belonging or any-
wise appertaining *To hold* the same piece or parcel &c. unto the
said (*U.*) their respective executors administrators and assigns as
tenants in common and not as joint tenants from now last
past for and during and until the full end and term of
years and three quarters of another year at and under the yearly
rent of £ payable quarterly for the first three years of the
said term and at and under the yearly rent of £ payable
quarterly during the then remainder of the said term clear of all
taxes &c. *And* in such lease shall be contained all and every the
like covenants clauses provisoes conditions restrictions and agree-
ments as are contained in the lease by virtue whereof the said
(*L.*) shall then hold the said premises [except &c.] *And also* a
covenant for the said (*L.*) his executors administrators and assigns
to indemnify them the said (*U.*) their executors administrators
and assigns respectively from the payment of any other or former
rent or rents than those which shall be reserved by the said in-
tended lease and from all costs and damages by reason of the
nonpayment thereof and all other demands whatsoever *And* the
said (*U.*) for themselves and their respective executors &c. do
hereby agree with the said (*L.*) his &c. to take the said premises
&c. from &c. for the said term at the yearly rents aforesaid and
that they shall and will pay the said rents in time and manner
aforesaid clear of all taxes &c. as aforesaid *And also* shall within
the space of years to be computed from the day

No. XLIX.
Under-Lease.

of last past erect build and set up upon the said piece or parcel of ground hereby agreed to be demised one messuage or tenement conformably in every respect to the plan &c. (*see last precedent*) And also that the said house shall be built &c. And that the said (U.) shall and will make areas &c. and slate &c. And also make a footway &c. And also pave &c. And the said (U.) do also hereby agree to accept &c. (*see last precedent*) And the said (L.) doth hereby further agree with the said (U.) that they the said (U.) well and truly paying the aforesaid yearly rents and performing and keeping all and singular the covenants on their parts and behalves hereinbefore expressed shall and will until the said (L.) shall duly execute and deliver to them or one of them the said intended lease peaceably and quietly have hold occupy and enjoy the aforesaid piece without any lawful let suit molestation or interruption of him the said (L.) his executors administrators or assigns or any other person or persons whomsoever claiming or to claim by from or under him or them *In witness &c.*



No. L.

*To occupy a
Cottage.*

Leave to occupy
while employed
by lessor.

No. L.

Agreement to occupy a Cottage.

It is agreed the day of 18 Between A. B. of &c. of the one part and C. D. of &c. of the other part as follows That the said C. D. shall and may occupy the cottage of the said A. B. situate in aforesaid late in the occupation of with its appurtenances for and during so long time as he the said C. D. shall work for the said A. B. and no longer and that when the said A. B. shall cease to employ him the said C. D. he the said C. D. shall and will forthwith quit and yield up the possession of the said cottage with the appurtenances unto the said A. B. And if the said C. D. fail or neglect so to do it shall be lawful for the said A. B. and his assigns or any person or persons whom he or they may appoint to enter into the said cottage and to turn and put out the said C. D. and his family and furniture and other things in the same manner as he might have done under a writ of possession. *Witness &c.*

Lessor may
turn out tenant.

Witness to the
signatures

Agreement by
tenant to give
up cottage.

Mr. A. B. having agreed that I may occupy his cottage situate at late in the occupation of while I work for him I

hereby promise to pay him the sum of £20 if I neglect or delay to quit and yield up the possession of the said cottage after I shall have ceased to work for him or he shall have discharged me from his service. *Witness* my hand [or "my mark"] &c.

Witness

No. L.
To occupy a
Cottage.

ARTICLES OF AGREEMENT BEFORE MARRIAGE.

- | | |
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| <p>1. <i>Validity of Articles.</i>
2. <i>Parol Agreements supported in Equity.</i></p> | <p>3. <i>Settlement according to the Articles.</i>
4. <i>What can and cannot be added to the Articles.</i></p> |
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SECT. 1. Where the minority of either of the parties, or any other circumstance, prevents the immediate execution of the settlement, articles are sometimes entered into as a preliminary to a future settlement. Nor is it necessary that they should be drawn up in the form of an agreement to make them binding in equity. Bonds entered into for making settlements are considered as good marriage articles. So likewise letters, provided they contain an absolute promise, and sufficiently define the terms of agreement, *Randal v. Morgan*, 12 Ves. 67. As the personal estate of a female, whether of age or not, vests in her husband upon her marriage, the settlement agreed to be made by the husband is for her advantage, and is in fact the husband's settlement and not the wife's, see *Simson v. Jones*, 2 Russ. & Mylne, 376; and the same rule appears to prevail with respect to the chattels real of the wife. As to choses in action of the wife, if not reduced into possession by the husband, the articles will not bind them, see *Borton v. Borton*, 13 Jur. 247. As to real estate of the wife, the articles will not bind it, as it never could become the property of the husband, see *Simson v. Jones*, *supra*. Though the articles for a settlement are placed under the head "Agreement," it must be remembered that they require the same stamps as an actual settlement.

Validity of
articles.

2. If an agreement intended to be reduced into writing is prevented by fraud from being so done, equity will compel a specific performance, *Prec. Chan.* 526. So likewise a parol agreement in part performed, *Taylor v. Beech*, 1 Ves. 227. But the acts which are considered to amount to a part performance must be such as could be done with no other view than to perform the agreement, 1 Fonbl. Eq. 187, n.; 1 Sugd. V. & P. 199, 10th edit.

Parol agree-
ment supported
in equity.

3. Articles being, for the most part, little more than heads or minutes of an agreement, cannot be followed in all respects literally; but if a settlement, in pursuance of articles, depart from their spirit and import, it will be deemed an imperfect execution of the articles, and be rectified in a court of equity, *West v. Erissey*, 2 P. Wms.

Settlement ac-
cording to the
articles.

353; *Randall v. Willis*, 5 Ves. 273. Wherever, therefore, it appears from the marriage articles that a strict settlement was intended, although it be not expressed in positive terms, a court of equity will execute the articles in strict settlement, *Trevor v. Trevor*, 1 P. Wms. 622.

4. Where, in articles for a settlement, there is no express declaration that the usual powers of sale should be inserted, such a power, it seems, cannot be inserted, *Wheate v. Hall*, 17 Ves. 80; Sugd. Pow. 178, 6th edit. But where marriage articles contained a clause for all usual powers, it has been decided, that powers of sale and exchange come within this clause, and ought to be inserted in the settlement, *Peake v. Penlington*, 2 Ves. & B. 311. (As to settlements, see further SETTLEMENTS.)



No. LI.

Marriage
Articles.

No. LI.

*Articles for a Settlement of the Freehold, Copyhold and Personal
Property of the intended Wife, an Infant*

Parties.

This Indenture made the day of in the
year of the reign of &c. and in the year of our Lord 18
Between (*Intended Wife*) spinster &c. of the first part (*Guardian*
or *Father*) of &c. of the second part (*Intended Husband*) of &c.
of the third part and (*Trustees*) of the fourth part *Whereas* a
marriage is intended to be shortly had and solemnized between
the said (*I. H.*) and said (*I. W.*) *And whereas* the said (*I. W.*)
will attain her age of twenty-one years the day of
next ensuing *And whereas* by the last will and testament of
W. C. late of &c. deceased bearing date on or about &c. and
several codicils thereto &c. the said (*I. W.*) is seised of or entit-
tled to divers freehold and copyhold estates and is possessed of
or entitled to a share of personal estate to a considerable amount
and eventually may become seised or possessed of or entitled to
other freehold copyhold and personal estates under and by virtue
of the same last will and codicils thereto *And whereas* on the
treaty for the said marriage it was agreed by and between the
said (*I. W.*) and (*I. H.*) with the approbation of the said (*Guardian*)
testified by his signing and sealing these presents that the
said freehold copyhold and personal estates or the share or re-
spective shares of the said personal estate of which the said
(*I. W.*) is or of which she or the said (*I. H.*) in her right from
time to time shall be or become seised of or entitled to under or
by virtue of the said will and testament and codicils as aforesaid
shall be settled upon the trusts and for the ends intents and pur-

Recital of
agreement for
the marriage.Lady will attain
her age, &c.;is seised of free-
hold estates, &c.
under a will.Agreement that
the lady's prop-
erty shall be
settled.

poses and under and subject to the powers provisoes declarations and agreements hereinafter directed and agreed to be limited expressed and declared of and concerning the same *Now this Indenture witnesseth* That in contemplation and consideration of the said intended marriage and for making some provision for the said (*I. H.*) and (*I. W.*) respectively during their respective lives and for the issue [if any] of the said intended marriage it is hereby declared and agreed by and between the parties to these presents to be the intent and meaning of them and these presents and the said (*I. H.*) with the consent of the said (*I. W.*) and (*Guardian*) testified as aforesaid *Doth* hereby for himself his heirs executors and administrators covenant and agree with the said (*T.*) their executors administrators and assigns and the said (*I. W.*) doth hereby declare direct and appoint that in case the said intended marriage shall be solemnized Then immediately after the solemnization of the same the said freehold and copyhold and also the said personal estate and the rents dividends interest and income shall be held upon the trusts hereinafter mentioned *And* that he the said (*I. H.*) and the said (*I. W.*) his intended wife shall within three calendar months after the said (*I. W.*) shall attain her age of twenty-one years at the costs and charges in all things of the said (*I. H.*) make do and execute all such deeds and assurances whatsoever as shall become necessary and proper for conveying and assuring unto or vesting in the said (*T.*) or the survivor of them his heirs executors and assigns the said freehold and copyhold messuages &c. and the said personal estate or parts or shares thereof of which the said (*I. W.*) now is or at any time or times hereafter may be or become possessed or to which she shall or may become entitled under or by virtue of the said in part recited will and codicils of the said *W. C.* upon the trusts and under and subject to the powers provisoes declarations and agreements hereinafter mentioned that is to say *Upon trust* That they the said (*T.*) or the survivor of them or the heirs executors or administrators of such survivor do and shall from time to time during the joint lives of the said (*I. W.*) and (*I. H.*) with their consent in writing or the consent of the survivor of them and after the death of the survivor of them then in their or his discretion or of their proper authority make any lease or leases in possession at an improved yearly rent or rents of all or any part of the said freehold or copyhold estates *And* upon the request and with the consent of the said (*I. H.*) and (*I. W.*) or the survivor of them as aforesaid make sale and absolutely dispose of

No. LI.
Marriage
Articles.

Testatum.

Husband and
wife to concur

in conveying
the freehold, &c.
of the wife to
trustees.

Upon trust.

To make leases.

To sell the real
estates.

No. LI.
Marriage
Articles.

To convert per-
sonal estate
into money.

To stand pos-
sessed of the
monies arising
from such sales,
&c.

In trust to per-
mit husband to
receive one
moiety, and
stand possessed
of the other
moiety for the
wife.

If wife survive,
to receive all
the dividends
&c. for her.

the said freeholds and copyholds or any of them or any part thereof and convey and surrender the same to the purchaser or purchasers thereof and receive into their or his hands the money arising from such sale or sales *And upon this further trust* that they the said (*T.*) or the survivor &c. his or her heirs &c. do and shall from time to time during the joint lives of the said (*I. H.*) and (*I. W.*) or the survivor of them and after their decease in the discretion and of the proper authority of them the said (*T.*) or the survivor &c. sell and dispose of and convert into money the said personal estate of the said (*I. W.*) or any part thereof and with such consent and in such discretion as aforesaid lay out and invest the money arising from such sale or sales and also the money arising from the sale of all or any of the said freeholds and copyholds in or upon any government or real securities in Great Britain *And* do and shall stand and be possessed of the said freeholds and copyholds in the mean time until such shall be sold *And* stand and be possessed of the said personal estate and the produce thereof and also of the produce of the said freeholds and copyholds in case the same shall be sold and of the stocks funds and securities in and upon which such produce of real and personal estates as aforesaid shall from time to time be invested *Upon trust* to permit the said (*I. H.*) during his natural life to receive and take one moiety or equal half part of all the dividends interest and income which shall become due for the said trust monies stocks funds and securities *And* do and shall during the joint lives of the said (*I. H.*) and (*I. W.*) retain and take the other moiety or half part of the same dividends interest and income and stand and be possessed thereof *Upon trust* for the separate use of the said (*I. W.*) independently of him the said (*I. H.*) *And* in case the said (*I. H.*) shall die in the lifetime of the said (*I. W.*) then from and after the death of the said (*I. H.*) *Upon this further trust* That the said (*T.*) or the survivor &c. do and shall permit the said (*I. W.*) and her assigns to receive and take all the dividends interest and income which shall become due for the said trust monies stocks funds and securities from thenceforth during her natural life *And* after the death of the said (*I. W.*) and (*I. H.*) and the survivor of them *Then upon trust* for such children as the said (*I. H.*) and (*I. W.*) shall jointly appoint and in default of appointment as the said (*I. W.*) if she survive shall appoint by deed or will *And* in default of appointment then to all the children equally share and share alike *And* in case there shall be no children *Then upon this further trust* That they the said (*T.*) or the sur-

vivor &c. shall convey and assure the said freeholds and copyholds unless sold in the meantime unto and to the use of the said (*I. W.*) her heirs and assigns and do and shall assign and transfer the said personal estate to her executors administrators and assigns *And* it is hereby declared and agreed That in the said settlement shall be contained a provision That in case all or any part of the said freeholds and copyholds shall be sold pursuant to the trusts hereinbefore contained then after such sale or sales shall be made the money arising therefrom shall for all the purposes of the intended settlement and against all persons to be entitled to any benefit under the same be considered as fully and effectually to all intents and purposes as if the money arising from such sale or sales had been settled as money *And that* in case no such sale or sales as aforesaid shall be made or as far as the same sale or sales shall not extend the same freeholds and copyholds shall remain and be considered as real estate *And also* a declaration that persons having trust monies shall not be answerable for the trustees' misapplication thereof *And also* a provision enabling trustees to apply rents &c. in maintenance and advancement of children *And also* a clause of indemnity to trustees and all other clauses provisions declarations and agreements usually inserted in settlements of a like kind *In witness &c.*

No. LI.
*Marriage
Articles.*

Money arising
from sale of
freeholds to be
considered as
money.

—◆—
No. LII.

*Agreement that a Person shall hold Title Deeds as a Deposit
and for a Mortgage at some future time.*

No. LII.
*Equitable
Mortgage.*

Obs. 1. It is a rule in equity, grounded on the decision of Lord Thurlow, in *Russell v. Russell*, 1 B. C. C. 269, that a mere deposit amounts to an equitable mortgage; but as the question respecting the intention of the parties has been frequently raised, a writing is absolutely necessary, in order to prevent litigation.

2. A mere agreement to mortgage, where there is no deposit of title deeds, will not in equity defeat the legal claims of other parties, *Finch v. Winchelsea (E.)*, 1 P. Wms., and ought not therefore to be substituted in any case for a regular mortgage.

Articles &c. Between (*Borrower*) of &c. of the one part and (*Lender*) of &c. of the other part *Witness* That in consideration of the said (*L.*) having on or about the day of instant transferred into the name of the said (*B.*) the sum of

No. LII.
Equitable
 Mortgage.

£ 3 per cent. Consolidated Bank Annuities the property of the said (L.) for the accommodation of the said (B.) and by way of loan to him the said (B.) *Hath* deposited and by these presents *Doth* declare that he hath deposited with the said (L.) and in his hands put the several deeds and papers mentioned or enumerated in the schedule to these presents being deeds and papers which relate to or concern the title of *all* that piece or parcel of ground messuage &c. (*parcels*) with the rights members and appurtenants *To the intent* that the same deeds and the same piece or parcel of ground messuage &c. and the fee-simple and inheritance thereof may be a security to the said (L.) his executors administrators and assigns for the transfer by the said (B.) and his executors of the sum of £ 3 per cent. Consolidated Bank Annuities as aforesaid and for the payment in the meantime by the said (B.) his heirs executors administrators and assigns to the said (L.) his executors &c. of the dividends which would have become payable on or for the said sum of £ 3 per cent. &c. if standing transferred in his or their names *And* the said (B.) doth hereby agree to purchase or cause to be purchased the said sum of £ 3 per cent. Consolidated Bank Annuities and transfer the same and pay the amount of the intermediate dividends thereon to the said (L.) his executors &c. at or on the times hereinbefore appointed for the transfer and payment thereof respectively without any abatement or deduction whatsoever *And* moreover if the said sum of £ 3 per cent. &c. and amount of dividends should remain on this security at any time after the day of next ensuing then he the said (B.) his heirs executors or administrators shall and will at any time thereafter at his and their own costs and charges upon the request of the said (L.) his executors &c. by such conveyances assignments and assurances as he or they or their counsel shall in that behalf advise well and effectually convey the said piece or parcel of ground messuage &c. with their and every of their appurtenants unto the said (L.) his heirs executors &c. free from all incumbrances subject nevertheless to a proviso for redemption thereof to be contained in such conveyances together with all other covenants clauses and stipulations as are usual in mortgages of a like kind *In witness &c.*



No. LIII.

Agreement in a Mortgage for Renewal of a Lease, and that Mortgagor will take 3l.10s. per Cent. for his Debt on prompt Payment.

No. LIII.

*Mortgage
(Interest).*

That he the said (*Mortgagor*) his heirs executors &c. or some of them shall and will at his their or one of their own proper costs and charges from time to time at the usual and accustomed times for the renewal apply to and obtain from the Dean and Chapter of B. a lease or leases of the lands hereditaments and premises mentioned and intended to be respectively assigned and assured with the appurtenants for a further term or terms of years and under such and the like rents covenants and agreements as are reserved and contained in the present lease so made and granted thereof as aforesaid and shall and will from time to time and at the usual times for such renewals as aforesaid continue to apply for the like new lease and leases during and so long as the said sum of £ or any part thereof shall remain or be chargeable upon the said premises *And also* that he the said (*Mortgagor*) his heirs executors or administrators or some of them shall and will well and truly pay or cause to be paid unto the said Dean and Chapter &c. as well the rent reserved by the said indenture of lease and the rent or rents to be reserved by any future lease or leases as all and every the fine or fines charges and expenses of such renewal or renewals as aforesaid which said new lease or leases so to be made and granted of the said premises as aforesaid shall immediately upon the making and executing thereof be from time to time assigned and transferred by the said (*Mortgagor*) his executors administrators or assigns unto the said (*Mortgagee*) his executors administrators or assigns under the like covenants provisoes and agreements as are in these presents expressed and contained of and concerning the said lease and premises hereby assigned or mentioned so to be *And moreover* that in case the said (*Mortgagor*) his heirs executors or administrators shall decline or neglect to apply for and obtain such new lease or leases at the usual and accustomed times for applying for the same or within the space of six calendar months then it shall and may be lawful to and for the said (*Mortgagee*) his executors administrators or assigns to apply for and obtain the same from the Dean &c. and to pay the fine or fines and all other the charges and expenses of such renewal or re-

No. LIII.

Mortgage
(Interest).

newals all which said fines charges and expenses with interest for the same after the rate of £ for every £100 for a year from the time or times of paying or advancing the same shall be charged upon the said premises and every part thereof so conveyed by the said (*Mortgagor*) unto and to the use of the said (*Mortgagee*) and his heirs as aforesaid And that no part of the said manor &c. in the said indenture of the day of and in these presents comprised shall be redeemed or redeemable by the said (*Mortgagor*) his heirs &c. or any of them but upon payment of all and every the sum and sums of money which shall be advanced and paid by the said (*Mortgagee*) his executors &c. for obtaining such renewal or renewals together with interest for the same from the time or times of advancement thereof as aforesaid as of the said principal sum of £ and interest any thing therein or herein in any wise to the contrary notwithstanding And it is hereby declared and agreed that until default shall be made of or in payment of the said £ and interest or of some part thereof contrary to the aforesaid proviso and condition for payment of the same it shall and may be lawful to and for the said (*Mortgagor*) his executors &c. peaceably and quietly to hold and enjoy the said rectory &c. mentioned and intended to be hereby assigned and assured and every part thereof with the appurtenants and to receive and take have hold and enjoy all and every the rents benefits and advantages thereof and of every part thereof to his and their own use without any let suit molestation interruption or disturbance of or by the said (*Mortgagee*) his executors &c. or any of them or of or by any person claiming or to claim by from under or in trust for him or them or any of them and without any account to be rendered to him or them for the same And lastly it is hereby declared and agreed by and between the parties to these presents and the said (*Mortgagee*) for himself his heirs &c. and every of them doth covenant and promise to and with the said (*Mortgagor*) his heirs &c. that if the said (*Mortgagor*) his heirs &c. or any of them do and shall on the day of and the day of so long as the said sum of £ or any part thereof shall be due on the security of these presents or within one calendar month after each of the said days respectively pay or cause to be paid unto the said (*Mortgagee*) his executors &c. interest for the said sum of £ at and after the rate of £ per cent. per annum by half-yearly payments then and in such case the said (*Mortgagee*) his executors &c. will accept interest

for so much of the said sum of £ as shall for the time being remain due at the rate of £3: 10s. per cent. per annum for every such half-year for which such interest shall be paid to him or them within such one calendar month as aforesaid *In witness &c.*

No. LIII.
Mortgage
(Interest).

AGREEMENTS FOR A PARTITION.

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| <p>1. <i>Partition by Parol, where formerly good or otherwise.</i></p> <p>2. <i>Effect of a Parol Agreement to hold in Severalty.</i></p> | <p>3. <i>Agreements sometimes necessary.</i></p> <p>4. <i>Stipulations as to Costs.</i></p> <p>5. <i>A Deed now necessary.</i></p> |
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SECT. 1. At common law, coparceners might have made partition by parol without deed, Litt. s. 250; also tenants in common might have made partition by parol, if they afterwards executed the partition by livery of seisin. A parol partition between joint-tenants of freeholds was not good, Dyer, 350 b; Co. Litt. 169 a; Cro. Eliz. 95. But joint-tenants as well as tenants in common might have made partition of a term of years without deed, Dyer, 350 b; Cro. Eliz. 95. The author of the "Commentaries," and after him Mr. Cruise, observe, that "the Statute of Frauds has abolished this distinction, and made a deed necessary in all cases." It was, however, the more general opinion, that a writing only was necessary on partition by coparceners, and a writing executed with livery of seisin by tenants in common, 2 Comm. 324; 4 Cru. Dig. 96, s. 16; *Oakley v. Smith*, Ambl. 368; Allnat on Part. 130.

2. An agreement between joint-tenants to hold in severalty will operate in equity to sever the joint-tenancy, so that the *jus accrescendi*, or right of survivorship, is destroyed, 2 Comm. 185; *Brown v. Raindle*, 3 Ves. jun. 256. But it appears that a mere verbal agreement will not be sufficient; there must be some note or writing, 2 B. C. C. 220; 1 Vern. 472; 2 Cru. Dig. 513. So a parol agreement for equality of partition, put in execution and long acquiesced in, if entered into by parties having a right to contract, will be established in equity, *Ireland v. Rittle*, 1 Atk. 542. But a partition under an agreement made by the husbands of two joint-tenants will not bind the inheritance of the wives, unless they be parties thereto, *Ireland v. Rittle*, 1 Atk. 542; 2 Cru. Dig. 513. A parol agreement to make partition by the guardian of an infant tenant in common will be binding, if confirmed by the infant after his coming of age by granting leases or otherwise, *Whaley v. Dawson*, 2 Sch. & Lef. 367. Also a parol partition between tenants in tail will be binding on the issue,

Effect of a parol agreement to hold in severalty.

- Partition.* 2 Vern. 233. But it appears that an agreement to make partition of copyhold lands cannot be enforced in a court of equity, if it be made without the privity of the lord, *Oakley v. Smith*, Ambl. 368; *S. C.* Eden, 261.
- Agreements sometimes necessary. 3. Although joint-tenants and tenants in common are compellable, by the 31 Hen. 8, c. 1, and 32 Hen. 8, c. 32, to make partition, yet this will not obviate the necessity for an agreement, particularly where delay is likely to arise in executing the partition.
- Stipulations as to costs. 4. It was formerly held, that, in the absence of all stipulation, the expense was to be borne equally by all parties, however unequal their interest, *Norris v. Le Neve*, 3 Atk. 81; *Cornish v. Gest*, 2 Cox's Cas. 27. This doctrine appears, however, to have been since overruled, *Calmady v. Calmady*, 2 Ves. jun. 568; an express provision on this point ought therefore to be inserted in the agreement.
5. By the 8 & 9 Vict. c. 106, s. 3, partitions of any tenements or hereditaments, not being copyhold, made after the 1st day of October, 1845, are void at law, unless made by deed.



No. LIV.

No. LIV.

Partition
(*Joint-Tenants*).

Agreement between two Joint-Tenants of Freeholds or Copyholds to make Partition.

- Parties.* *Articles &c.* Between A. B. of &c. of the one part and C. D. of &c. of the other part *Whereas* under or by virtue of the last will &c. (*or as the case may be*) the said A. B. and C. D. are seised
- Recital of seisin.* to them and their heirs in equal shares and proportions as joint-tenants in possession of certain messuages lands and hereditaments situate at &c. *And whereas* the said A. B. and C. D. are desirous of making such partition thereof as is hereinafter particularly expressed *Now these presents witness* and each of them the said A. B. and C. D. doth for himself respectively and for his respective heirs executors and administrators agree with the other of them his heirs &c. in manner following that is to say (a) That
- Agreement to make partition.*
- Testatum.*

Partition made by commissioners or their umpire.

(a) If the partition is to be made by commissioners, instead of this and the subsequent clause, say "That a partition and division of all and singular the said messuages lands and hereditaments into two separate allotments as nearly as may be shall be made by (*one commissioner*) of &c. a commissioner nominated by and on behalf of the said A. B. and (*other commissioner*) of &c. a commissioner nominated by and on behalf of the said C. D. or by the umpire to be chosen by them *And* that the said (C.) or their umpire shall apportion each of the allotments in severalty to the said A. B. and C. D. and decide what sum of money shall be paid for equality of partition &c. *And also* that each of them the said A. B. and C. D. shall and will join" &c. (*see above.*)

the messuages &c. situate at &c. shall henceforth become the sole property of the said A. B. his heirs and assigns and the &c. of the said C. D. &c. *And* that it shall be referred to (*Arbitrator*) of &c. to settle the equivalent in money or otherwise by way of compensation for equality of partition *And* that the said parties will stand and abide by the judgment of the said (*A.*) *And also* that each of them the said A. B. and C. D. shall and will join and concur (*a*) in making and doing all such acts deeds conveyances and assurances as the other of them his heirs or assigns or his or their counsel shall think necessary for parting and severing the several messuages lands and hereditaments so devised to them the said A. B. and C. D. and for conveying the said messuages lands and hereditaments situate at &c. in severalty unto the said A. B. his heirs and assigns and the several messuages lands and hereditament situate at &c. in severalty unto the said C. D. his heirs and assigns *And lastly* that the costs (*b*) and expenses of the said conveyances and assurances shall be borne and paid by the person or persons in whose favour the same shall be made and executed and that all other costs and expenses attending the said partition shall be borne equally between the said parties *In witness &c.*

No. LIV.
Partition
(*Joint-Tenants*).

Part of the premises to belong to the one, and part to the other.

Arbitrator to determine equality of partition.

Parties to execute mutual conveyances.

Costs.

No. LV.

Agreement between two Joint-Tenants to hold in severalty.

Articles &c. Between I. D. of &c. of the one part and C. D. of &c. of the other part *Whereas* the said I. D. and C. D. have for many years exercised and carried on in copartnership the trade of and as such partners have at different times purchased and acquired the several freehold and leasehold estates mentioned or referred to in the said schedule hereunder written or hereunto annexed marked with the letters A. B. and the same have been purchased and acquired by and out of the capital or stock in trade on account of the said copartnership or joint trade and they are beneficially entitled to the same estates in equal shares and proportions *And whereas* the said partners are desirous of making an equal division of the said freehold and leasehold

No. LV.
Partition
(*Severalty*).

Recital of copartnership.

That the parties have made a division.

(*a*) If the lands be copyhold, say "By the licence of the lord or lady for the time being of the said manor." See *Obs.* 2.

(*b*) As to the costs, see sect. 4.

No. L.V.
Partition
(Severalty).

premises between themselves and for that purpose have proceeded to make a valuation thereof and having fully considered the nature and tenure of the different estates comprised in the two schedules and the value thereof have mutually agreed that the estates mentioned and referred to in the said schedule marked with the letter A. shall from the day of now next ensuing be considered as the sole and exclusive estate and property of and shall henceforth be held in severalty by the said I. D. and that the estates mentioned in the schedule marked with the letter B. shall be considered as the sole and exclusive estate and property of and be held in severalty by the said C. D.

Testatum.

I. D. covenants
 to convey and
 assure to C. D.
 his share ;

Now these presents witness That in pursuance of the said agreement and for giving effect to the same and in consideration of the agreement hereinafter contained on the part of the said C. D. he the said I. D. doth hereby for himself his heirs executors and administrators agree with the said C. D. his heirs executors and administrators &c. in manner following that is to say That he the said I. D. and every person claiming and to claim by from through or under him or them shall and will from time to time and at all times hereafter at the reasonable request and at the costs and charges of the said C. D. his heirs executors or administrators make and execute or join in making and executing all such acts matters and things assignments conveyances and assurances in the law as shall be requisite and necessary for assigning conveying and assuring the several freehold and leasehold hereditaments referred to in the schedule marked with the letter B. and all the estate right title and interest of him the said I. D. into and out of the same unto and to the use of the said C. D. his heirs executors and assigns according to the respective nature and tenure thereof as he or they shall direct or appoint *And*

and in the mean-
 time for quiet
 enjoyment.

further That in the meantime and until such conveyances assignments and assurances shall be made or executed as aforesaid it shall be lawful for the said C. D. his heirs executors administrators and assigns from time to time and at all times hereafter according to the respective tenures thereof peaceably and quietly to have hold occupy possess and enjoy the several freehold and leasehold estates specified in schedule B. and to receive and take the rents issues and profits thereof from the day of

18 for his and their own exclusive use and benefit without any let hindrance or interruption of from or by the said I. D. his heirs executors administrators and assigns or any other person or persons claiming or to claim by from through or under him them or

any of them *And these presents further witness* That in consideration of the agreement hereinbefore contained on the part of the said I. D. he the said C. D. doth hereby for himself &c. agree &c. with and to the said I. D. &c. in manner &c. that he the said C. D. and every person &c. at the reasonable request and at the costs and charges of the said I. D. &c. make do &c. for conveying assigning and assuring the several freehold and leasehold hereditaments mentioned and referred to in schedule A. and all the estate &c. of him the said C. D. into &c. unto and to the use of the said I. D. &c. so that for the making &c. the said C. D. &c. *And further* &c. it shall be lawful for the said I. D. &c. without any let &c. of or from the said C. D. &c. *In witness* &c.

No. LV.
Partition
(Severalty).

Further testamentum;
C. D. covenants to convey to I. D.

No. LVI.

Agreement between Parties entitled under a Will to make equal Distribution.

No. LVI.
Partition
(Distribution).

Obs. Agreements of this kind, whether made in the lifetime of the testator or after his death, are binding on the parties, and will be supported in equity, unless the devisee is restrained by the terms of the will from alienating the estate devised to him, *Wethered v. Wethered*, 2 Sim. 182; recognizing *Beckley v. Newland*, 2 P. Wms. 182; *Hobson v. Trevor*, ib. 291; *Harwood v. Tooke*, 1 Madd. Chan. Pract. cited 2 Sim. 192.

This Indenture made the day of 18 between A. B. of &c. of the first part C. D. of &c. of the second part E. F. of &c. of the third part G. H. of &c. of the fourth part I. K. of &c. of the fifth part *Whereas* (a) (*Testator*) by his last will and testament duly made and executed and bearing date day of *Did* give and bequeath all and singular his goods chattels debts monies and all other the personal estate and effects of him the said (T.) unto the said (*Parties*) in the several shares and proportions therein mentioned *And whereas*

(a) If the agreement be made in the lifetime of the testator recite "Whereas (*testator*) stands seised and possessed of divers freehold and copyhold estates and also a considerable personal estate which the said (*parties*) expect to be given devised or bequeathed to them and in case he die intestate then the said (*parties*) or one of them by descent by the Statute of Distribution or by surrender or the custom of the manor or by some other ways or means would become entitled to such freehold and copyhold estates and the personal estate as aforesaid."

No. LVI.
Partition
(Distribution).

doubts have arisen as to the intentions of the said (*T.*) as expressed in the said will, and the said (*P.*) parties hereto are desirous of preventing all differences and questions which might arise in regard thereto *Now this Indenture witnesseth* and it is hereby declared and agreed by and between the parties to these presents that all and singular the goods chattels debts monies and all other the personal estate and effects of the said (*T.*) shall be divided between them respectively and their respective (*a*) executors and administrators in equal shares and proportions share and share alike notwithstanding the said will or other testamentary writing of him the said (*T.*) bequeathing the same to them in a different manner (or “as if the said (*T.*) had died intestate”) (*b*) *And further* each of them the said (*P.*) severally for himself and herself and his and her respective heirs executors administrators and assigns and for and concerning only the acts deeds and defaults of himself and herself respectively and his or her respective (heirs) executors &c. covenant and agree with each of the others of them severally and his or her (heirs) executors &c. that they the said &c. respectively and their respective (heirs) executors &c. shall and will from time to time (*c*) when and as often as they respectively shall be thereunto required by any other or others of them his her or their (heirs) executors &c. and without any recompence or consideration for the same but at the costs and charges of the person by whom such request shall be made do and execute all such acts deeds and assignments in the law whatsoever for effectuating said agreement and more fully and completely confirming the same as their respective counsel shall reasonably advise or require.

In witness &c.

(*a*) If there be any real estate say “heirs executors &c.”

(*b*) If it be so agreed in the lifetime of the testator say “*And further* that all property which shall be given at any time or times hereafter to any or either of them the said (*parties*) shall for all the purposes of this agreement be deemed to be the property of the said (*testator*) to be so divided as aforesaid and the same or the value thereof shall be brought into hotchpot and accounted for according to this agreement.”

(*c*) If the agreement be made in the lifetime of the testator say “After the decease of the said (*testator*).” An agreement of this kind cannot be carried into effect until the death of the testator, and therefore a party is not guilty of laches who waits until then, before he asserts his right, *Whethered v. Whethered*, *ubi sup.* see *Observation*.

AGREEMENTS BETWEEN PRINCIPAL AND AGENT.

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. <i>Agent when authorized by Writing, and when not.</i>
<i>When by Deed or otherwise.</i> 2. <i>Agent must act in the Name of Principal.</i> 3. <i>Principal bound by Acts of Agent.</i> 4. <i>Agent not to exceed his Authority.</i> 5. <i>Agent not answerable for Losses.</i> | <ol style="list-style-type: none"> 6. <i>Credit when to be given by Agent.</i> 7. <i>Agent cannot bind Principal for his own Debt.</i> 8. <i>Duration of Contract.</i> 9. <i>Compound Interest allowed to Agents.</i> 10. <i>Agents not Partners.</i> |
|--|--|

SECT. 1. By the Statute of Frauds, 29 Car. 2, c. 1, ss. 1, 3, relating to leases, &c., an agent must be authorized by writing to sign any agreement, but by the fourth section an agent may be authorized by parol to treat for or buy an estate, 1 Sugd. V. & P. 186, 10th ed.; and by the seventeenth section he may be authorized in the same manner for the sale of goods. But in every case, as well of special as general agencies, it is highly expedient that the limits and extent of the agent's authority should be defined by some writing, *Mortlock v. Buller*, 10 Ves. 310; *Daniel v. Adams*, Ambl. 495. Formerly, every delegation of authority must be by deed, Co. Litt. 48 b; 1 Salk. 96; but since the statute, agreements in writing, though not sealed, are said to have had some better countenance, *Wheeler v. Newton*, Prec. Cha. 16; but a power to make or to take livery of seisin, or to do any matter which concerns the freehold, must be by deed, Co. Litt. 48 b; *Streiglitz v. Egginton*, 1 Holt, 141. So an authority to execute a deed, *Harrison v. Jackson*, 7 T. R. 209.

Agent when authorized by writing and when not.

When by deed or otherwise.

2. Generally speaking, an agent or attorney, who has authority to do an act, must do it in the name of his principal: thus the execution and delivery of a deed must be in the name of the principal; if it be the execution of the agent only, it is void as to the principal, *Moor*, 70; but the form of words used in the execution is not material, *Wilks v. Bucks*, 2 East, 144; (see further, APPOINTMENT, POWER OF ATTORNEY.) In mercantile transactions there is this difference between a broker and a factor, that the latter is authorized to sell in his own name, but the former is not.

Agent must act in name of principal.

3. The principal is bound by the acts of the agent in every thing which falls within the scope of his authority, *Webster v. Seekamp*, 4 B. & A. 352. Care ought therefore to be taken, in the penning such instruments, that they should not give an authority beyond what was in the contemplation of the principal. Thus, when a broker, who is not authorized to sell in his own name, sells without disclosing the name of his principal, he acts beyond the scope of his authority, and

Principal bound by the acts of his agent.

Principal and Agent.

Agent not to exceed his authority.

Agent not answerable for losses.

Credit when to be given by agent.

Agent cannot bind principal for his own debt.

Duration of contract.

Compound interest allowed to agent.

Agents not partners.

his principal is not bound by the contract, *Baring v. Corrie*, 2 B. & A. 137.

4. A factor who is the agent in a foreign country of a merchant residing at home, or *e contra*, is mostly authorized by a letter of attorney, and must pursue his commission strictly.

5. Where power is given to the factor in express words, as is usually done, to dispose of the goods as if they were his own, the acts of the factor will be excused, although they occasion loss to the principal. If the goods which come to his hands receive damage, but not through his negligence, the principal shall bear the loss, 4 Co. 84. So likewise, if the factor be robbed, he shall be discharged in account brought against him by his principal, *ib*.

6. A bare commission to sell is not sufficient power for the factor to give credit, *Brown v. Staton*, 2 Chit. Rep. 353; and by the general power of doing as if it were his own, he may not give credit for an unreasonable time, 2 Cha. Ca. 57.

7. A factor cannot bind in effect the property or the goods of his principal, by pledging them as a security for his own debt, though there is a formality of a bill of parcels and a receipt, Stra. 1178. And now by the 6 Geo. 4, c. 94, s. 3, it is provided that persons taking such goods in pledge or deposit acquire no other right than was possessed by the person pledging the same, and (by s. 7) that agents fraudulently pledging the goods of their principals are deemed guilty of a misdemeanor, punishable by fourteen years' transportation.

8. An agreement with an agent to manage a concern during his life, for a stipulated salary, gives him a right to the advantages of it, although he be afterwards discharged, *Ball v. Coggs*, 1 B. P. C. 140; but an agent is not to employ himself in the affairs of another during the subsistence of the appointment, *Thompson v. Havelock*, 1 Campb. 527.

9. Where an agent advances money for a principal, interest may, contrary to the general rule of law, be computed upon interest, *Bruce v. Hunter*, 3 Campb. 467.

10. Although, generally speaking, a perception of the profits will constitute a partnership, yet a remuneration made to a traveller, clerk, or agent, out of the sums received by or for his master or principal, does not subject him to the liabilities of a partner, *Benjamin v. Porteus*, 2 H. Bla. 590; *Dry v. Boswell*, 1 Campb. 320; *Cheap v. Cramond*, 4 B. & A. 663.

No. LVII.

Agreement between a Brewer and a Managing Clerk.

No. LVII.
*Brewer and Ma-
naging Clerk.*

Obs. Where such agreement must be in writing, see *supra*, sect. 1.
As to stamp, see *ante*, AGREEMENT, 10.

Articles &c. Between (*Principal*) of &c. of the one part and (*Clerk*) of &c. of the other part *Witness* That for the considerations hereinafter contained on the part of the said (*P.*) he the said (*C.*) for himself his executors &c. doth hereby agree with the said (*P.*) that he the said (*C.*) shall and will henceforth for and during the term of years (*a*) to be computed from the day of the date of these presents if both of them the said (*P.*) and (*C.*) shall so long live become be and continue the clerk of him the said (*P.*) in his trade or business of a common brewer and shall and will during the term aforesaid give up his whole time and attention to the same in managing conducting superintending and improving the same to the utmost of his power and ability *And also* shall and will during the said term do and perform all such acts matters or things in about or relating to the said trade or business as he the said (*P.*) shall from time to time direct order or appoint *And* shall not nor will at any time hereafter without the consent in writing of him the said (*P.*) his &c. divulge or make known any trusts secrets or dealings of or relating to the said trade or business of him the said (*P.*) *And also* that he the said (*C.*) shall and will during the said term be just and faithful to the said (*P.*) in all his business dealings and transactions whatsoever *And* shall and will provide and keep so many books of account as shall be necessary wherein he shall fairly write and enter all monies received and paid and all goods in the said trade which shall be bought or received sold or delivered out upon credit or otherwise and the price and prices at which the same shall be bought or sold and all other matters and accounts which shall be necessary to manifest the state of the said trade which said book or books of account shall always remain and be kept in the usual office or place of carrying on the said trade *And these presents further witness* That in consideration of the covenants hereinbefore contained on the part of the said (*C.*) he the said (*P.*) doth hereby covenant and agree that he the said (*P.*) shall and will yearly and every year during the

Clerk agrees to
serve for a term.

To execute the
orders of the
principal;

to keep his ac-
counts;

be just and
faithful;

keep books of
account.

Principal agrees
to pay salary;

(a) As to the duration of the contract, see *ante*, sect. 7.

No. LVII. said term of years determinable as aforesaid well and truly
 Brewer and Ma- pay unto the said (C.) by half-yearly payments on the day
 naging Clerk. of and the day of the clear yearly sum of
 £ of &c. without any deduction whatsoever the first half-
 yearly payment thereof to be made on the day of
 and an allow- And shall and will always yearly and every year during the said
 ance in propor- term pay (a) to the said (C.) over and above the yearly sum of
 tion to the gains £ so much lawful money as will amount or be equivalent
 of the trade. to one th part of the clear gains or profits of or arising
 from the said trade or business so to be carried on by the said
 (C.) as managing clerk after deducting the said sum of £
 and all other debts and dues which shall be paid or payable in
 respect of the said trade and also all losses and damages which
 shall happen to the said trade by reason of bad debts or otherwise
 And also in case of the death of either of them the said (P.)
 and (C.) during the said term shall and will pay unto the said
 (C.) his executors or administrators a proportional part of the
 said yearly payments so covenanted to be made to him as afore-
 said from the last of such respective days of payment next pre-
 ceding his decease up to the day of his decease And finally it
 is hereby declared and agreed by and between the parties hereto
 That it shall be lawful for the said (P.) at any time to determine
 these presents upon giving unto the said (C.) three months' notice
 thereof in writing and on the-expiration of the said three months
 and the payment of what shall be due unto the said (C.) every
 article clause and covenant hereinbefore mentioned shall cease
 and be void any thing herein contained to the contrary in any
 wise notwithstanding. In witness &c.

Principal to be
 at liberty to
 dismiss clerk.

No. LVIII.

*Agreement between a Merchant, or Manufacturer,
 and a Factor.*

No. LVIII.
 Merchant and
 Factor.

Factor agrees to
 take charge of
 goods on sale.

Articles &c. Between &c. Witness That for the considerations
 &c. the said (Factor) for himself &c. doth covenant &c. that he
 the said (F.) shall and will during the term of years from
 the date of these presents accept and take into his charge and

(a) As to the perception of profits by way of remuneration, see *ante*, sect. 10.

trust all such goods wares and merchandizes as he the said (P.) shall send and consign to him the said (F.) and also shall and will use his best endeavours to sell and dispose of the same to the best profit and advantage *And also* that he the said (F.) shall and will keep a true account of all such goods as the said (P.) shall from time to time assign to him or that may come into his hands and of all sales barter and other transactions concerning the same and (a) shall every months make true payment and delivery unto the said (P.) his &c. of all such monies securities and other things as shall be received by the said (F.) for the said wares and merchandizes *And* at the expiration or sooner determination of the said term shall and will deliver up unto the said (P.) all such goods wares and merchandizes as shall remain unsold in the custody of the said (F.) *And also* that the said (F.) shall not nor will give credit to any persons or person for a greater length of time than months without the consent in writing of the said (P.) *And also* that he the said (F.) shall not during the said term deal or trade as a factor for any other person for the buying and selling of any goods wares or merchandizes whatsoever (or "any wares or goods of a like kind," as the case may be) *And* the said (P.) in consideration of the said agency doth hereby covenant promise and agree with the said (F.) that he the said (P.) shall and will (b) pay unto the said (F.) yearly and every year the sum of £ so long as he shall continue the factor of the said (P.) under the present agreement.

In witness &c.

No. LVIII.
*Merchant and
Factor.*

Factor to render
accounts at
stated times;

to deliver up
unsold goods;

not to give
credit;

not to carry on
any other trade.

Principal agrees
to give factor a
yearly salary.

No. LIX.

*Agreement to form an Association for the Prosecution of
Offenders.*

No. LIX.
*Prosecution of
Offenders.*

Articles &c. Between A. B., C. D. and E. F. of the one part and the other persons whose names are hereunto sub-

(a) If the factor be abroad say "And shall immediately remit home to the said (P.) all monies bills and other securities received on account of such sales." Factor to make remittances.

(b) Or, if it be so agreed, say "shall and will allow the said (F.) his executors or administrators the sum of £ for every 100 pounds' worth of goods sold and so in proportion for any less sum than 100l. by way of commission *And also* the annual sum of £ by way of salary for his trouble."

No. LIX.
*Prosecution of
Offenders.*

Parties mutual-
ly agree to
assist in bring-
ing offenders to
justice ;

to authorize
certain attornies
to prosecute ;

to offer rewards
for detecting
offenders,

and procure a
pardon for ac-
complices ;

and to subscribe
for defraying
the expenses ;

scribed of the other part &c. *Whereas* robberies and felonies have of late become very daring and frequent within the town-ship of _____ in the county of _____ and the neighbour-
hood thereof and it is deemed absolutely necessary to enter
into an association for the prosecution of offenders *Now* we
whose names are hereto subscribed do hereby each for himself
and herself promise and agree with and to the others of them
That we will use our utmost and best endeavours to apprehend
all and every person and persons whomsoever who shall be guilty
of or commit any robbery burglary larceny felony or other criminal
offence against the person or property of us or any of us or by
means whereof we or any of us or of our property shall be affected
or injured *And* shall and will prosecute to conviction all such
offenders *And* for that purpose we do hereby nominate appoint
and empower M. W. and C. H. attornies at law or either of them
but nevertheless under the direction and control of the committee
hereinafter mentioned to take and use all lawful ways and means
to prosecute convict and bring to justice all and every such
offender or offenders *And* we agree for the better discovering
and bringing to justice of such offenders that we will give such
reward to any person or persons who shall inform and give evi-
dence against such offender or offenders as shall be thought
proper by the committee to be constituted as hereinafter men-
tioned *And* in case it shall be necessary that we will use our
best endeavours to procure a free pardon for any accomplice or
accomplices who shall be concerned in any of the offences afore-
said and shall make a full discovery and give evidence thereof
so that one or more of such other offender or offenders may be
convicted and brought to justice on such information and dis-
covery (a) *And* for the purposes aforesaid we do hereby further
agree for the present to advance and subscribe the sum of
shillings to defray the expenses of prosecutions and rewards and
such other necessary and incidental expenses as shall or may be

(a) If the expenses are to be raised by a rate, say “ *And* for the purposes aforesaid we hereby agree that all costs charges and expenses whatsoever which shall be incurred and sustained in any manner in or about the prosecution of such offenders and carrying the present agreement into effect shall be paid and raised by us and every of us jointly by an equal and proportional pound rate and assessment in proportion to the yearly value of the messuages lands tenements and hereditaments by us respectively held and occupied within the said township according to the value at which the same are rated for the relief of the poor within the same township.”

incurred thereby and also from time time whenever required to advance and subscribe such further sums of money for the purposes aforesaid as the said committee shall deem expedient in that behalf And that all the costs charges rewards and expenses whatsoever which shall be incurred and sustained in any manner in or about the prosecution of such offenders and in carrying this agreement into effect shall be paid out of the said subscription-funds which shall be lodged in the hands of I. H. and Co. bankers for the purposes aforesaid And it is hereby mutually agreed by and between the parties hereto that any five of the same parties to be elected annually out of the whole number at a meeting to be convened for that purpose shall be a committee for the time being who shall have the sole management and direction of the association which said committee is hereby authorized and empowered to make such further and other orders and regulations for effecting the purposes aforesaid as they or three of them shall deem expedient and necessary *Provided always*, that this association shall extend only to persons and property residing and being within the said township and neighbourhood and five miles thereof and not elsewhere any thing hereinbefore contained to the contrary thereof in anywise notwithstanding (a)
As witness our hands this day of 18

No. LIX.
*Prosecution of
 Offenders.*

to elect a committee annually.

(a) Also add, if necessary, "*Provided further* that if any of us whose names are hereunto subscribed shall at any time hereafter leave and depart from the said township and shall not hold occupy or enjoy any messuages lands tenements or hereditaments within the same township then we so departing shall be immediately discharged from this agreement on paying up his her or their proportion of expense thus incurred (if any) in carrying into effect the purposes of the said association."

AGREEMENTS FOR THE SALE AND PURCHASE OF ESTATES.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. <i>Agreement must be in Writing.</i> 2. <i>Agreement when void or otherwise.</i>
<i>Construction of Agreements for Sale.</i> 3. <i>Stipulation as to the Title.</i> 4. <i>As to necessary Parties.</i> 5. <i>As to subsisting Leases.</i> 6. <i>Consideration.</i> 7. <i>Expense of preparing Conveyance.</i> | <ol style="list-style-type: none"> 8. <i>Consequences of the Contract.</i>
<i>Representatives of Vendor must complete Contract.</i>
<i>Liability of Purchaser.</i>
<i>Purchaser entitled to intermediate Profits.</i>
<i>Time of the Essence of the Contract.</i> 9. <i>Penal Clause.</i> |
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Agreement must be in writing.

SECT. 1. By the Statute of Frauds, an agreement for the sale of an estate of any lands, tenements or hereditaments, or any interest in or concerning the same, will not be binding until it is reduced into writing, even although a deposit has been paid, *Blagden v. Bradbear*, 12 Ves. 466; but a note or letter will take a case out of the statute, *Ford v. Complin*, 2 B. C. C. 32. An agreement for the sale of timber or potatoes growing upon the land has been held not to be within the statute, because they are mere chattels, and the contract does not confer any exclusive right to the land for a time, *Hob. 173*; *Ld. Raym. 182*; *Parker v. Stanniland*, 11 E. 362; *Emmerson v. Heelis*, 2 Taunt. 38. Where there is an agreement for the sale of real and personal property together, it is held to be an entire contract; and if void as to the land will be void *in toto*, *Cooke v. Tombs*, 2 Anst. 425; see further 1 Sugd. V. & P. 142, *et seq.* 10th edit.; also Dig. p. ii. tit. FRAUDS (STATUTE OF).

Agreement when void or otherwise.

2. An agreement for a sale ought to be drawn with great care, so as to contain every important particular. Nothing can be added by parol evidence to supply an omission in an agreement after it has been correctly reduced into writing, provided it was drawn according to the intention of the parties at the time, *Omerod v. Hardman*, 5 Ves. 730. Neither in the construction of agreements will the acts of the parties, tending to show their own conception of the meaning, be taken into consideration, *Clifton v. Walmesley*, 5 T. R. 564; *Iggulden v. May*, 7 E. 237; 9 Ves. 325; see further as to how far parol evidence is admissible to vary or annul written agreements, 1 Sugd. V. & P. chap. iii. sect. viii. ix.; Dig. p. ii. tit. FRAUDS (STATUTE OF).

Construction of agreements for a sale.

Stipulation as to the title.

3. Notwithstanding the clause, "Provided the title be approved by the purchaser's counsel," yet, if it appear to a Court of Equity to be good, a purchaser will be bound to complete the contract,

although it may be objected to by his counsel, *Lewis v. Lechmere*, 10 Mod. 505; *Camfield v. Gilbert*, 4 Esp. 221; unless it be otherwise expressly stipulated by the parties.

Sale of an Estate.

4. As to the words "necessary parties," usually inserted in agreements, they are particularly important when the estate is purchased of trustees or executors, as, without such stipulation, it appears that a purchaser cannot insist on any of the *cestui que trusts* being parties, nor upon any other covenants from the trustees or executors, except that they have not incumbered, *Wakeman v. Duchess of Rutland*, 3 Ves. 236, 505.

As to necessary parties.

5. If a person contract for the purchase of an estate with notice of a subsisting lease, he will be considered conusant of the contents of the lease, and be bound by his contract, although such lease should contain covenants contrary to the custom of the country. A purchaser ought therefore either to inspect the lease, or obtain a covenant from the vendor, that it contains such covenants only as are justified by the custom of the country, *Taylor v. Stibbert*, 2 Ves. jun. 440; 3 Sugd. V. & P. 440, 10th edit.

As to subsisting leases.

6. The consideration in an agreement for the sale of an estate must be either certain or reducible to a certainty. A contract for the sale of an estate at so many years' purchase, or at so much per acre, instead of a specified sum, has been deemed a sufficient certainty of price, *Milnes v. Gery*, 14 Ves. 408; *Shannon v. Bradstreet*, 1 Sch. & Lef. 73.

Consideration.

7. The expense of preparing a conveyance must, according to the established practice of the profession, be borne by the purchaser, if there is no express stipulation to the contrary, 2 Ves. jun. 155. And it appears also now to be decided, that he must prepare and tender the conveyance to the vendor, *Baxter v. Lewis*, Forr. 61; 1 Sugd. V. & P. 376, 10th. edit. But, as this is a doubtful matter, it ought to be expressly stipulated in the agreement.

Expense of preparing conveyance.

8. Where an agreement has been entered into to sell an estate, the heirs of the vendor are bound by the contract, although not expressly named, *Gill v. Vermuden*, 2 Freem. 199. And now by 11 Geo. 4 & 1 Will. 4, c. 60, s. 16, the representatives of any deceased vendor are to be trustees for the purchaser after a decree for a specific performance; so likewise persons in whose names purchases are made; so, by s. 17, tenants for life, &c., of estates devised in settlement may be directed to convey after a decree for specific performance; and by 11 Geo. 4 & 1 Will. 4, c. 65, s. 27, committees of lunatics were authorized to convey in performance of covenants under direction of the Lord Chancellor. By the 4 & 5 Will. 4, c. 23, s. 2, if a mortgagee or trustee of any land die without an heir, the Court of Chancery may appoint a person to convey. By the 5 & 6 Will. 4, c. 17, the act of 1 Will. 4, c. 65, so far as extends to the renewal of

Consequences of the contract.

Representatives of deceased vendor must complete contract.

*Sale of an
Estate.*

leases, which any person of full age and not under disability would be compelled to renew, is extended to Ireland. By the 1 & 2 Vict. c. 69, when the money due on mortgage has been paid to the executor or administrator of a deceased mortgagee, who shall have died without being in possession of the land, or in receipt of the rents and profits, the Court of Chancery is empowered to appoint a person to convey in the place of an heir or devisee who shall be out of the jurisdiction of the Court, or of whom it may not be known whether he be living or dead, or who may refuse to convey. But by 13 & 14 Vict. c. 60, the Court of Chancery is authorized to make orders conveying lands vested in lunatic or infant trustees or mortgagees, or in trustees out of the jurisdiction of the Court, or in several trustees, of whom it shall not be known which survived, or when it shall be uncertain whether the trustees last seised be living, or when the trustee last seised shall have died intestate and without an heir, or when it shall not be known who was his heir or devisee, or where a trustee refuse to convey, or in the place of the heir or devisee who shall be out of the jurisdiction of the Court, or who cannot be found, or who shall refuse to convey, of any mortgagee who shall have died without having entered into possession, or in the case of such mortgagee having died intestate and without an heir, or of its being unknown who is his heir or devisee. In all cases under the last-mentioned act the Lord Chancellor or Court of Chancery may appoint a person to convey instead of making an order conveying the land. So a purchaser, being considered in equity to be owner of the estate from the time agreed on for completing the contract, is liable to any loss which may happen to the estate between the agreement and the execution of the conveyance, *Paine v. Meller*, 6 Ves. 349; 1 Sugd. V. & P. 277, 10th edit. If, therefore, the subject of the contract be that which may be destroyed by fire, it is prudent to stipulate, either that the purchaser should insure, or that the vendor should keep on the insurance. By the same rule, a purchaser will be entitled to any benefit which may accrue to the estate in the intermediate time; as if a person agree to give an annuity for the life of the vendor, or other contingent consideration for an estate, and the vendor die before the conveyance is made, the purchaser will be entitled to a specific performance of his contract, unless it be expressly stipulated to the contrary, *Mortmer v. Capper*, 1 B. C. C. 156; *Jackson v. Lever*, 3 ib. 605; 9 Ves. 246. Another consequence of the general rule in equity, that what is agreed to be done is considered done, is, that the purchaser who contracts for the purchase of an estate will be entitled to the rent, and the vendor to interest for his money, until the execution of the conveyance, *Seton v. Slade*, 7 Ves. 274. But as the rate of interest to be paid by the purchaser is not fully settled, and frequent disputes arise on account of the delays on one side or the other, it seems desirable that these points should be determined by

Liability of
purchaser.

Purchaser en-
titled to inter-
mediate profits.

some express stipulation, Sug. V. & P. Append. No. VI. Another consequence of the rule above mentioned is, that an agreement to surrender copyhold lands will operate to bar the widow's free-bench, although the husband die before the surrender is perfected, *Hinton v. Hinton*, 2 Ves. 631; *Brown v. Raindle*, 3 Ves. jun. 256; but as to dower, see DOWER. In sales by private agreement it is usual to fix a time for completing the contract. This is of importance, as it is now held (contrary to former decisions) that time is of the essence of the contract, *Levy v. Lindo*, 3 Mer. 84.

Sale of an Estate.

Time of the essence of the contract.

9. As to the penal clause very frequently inserted in agreements of this kind, see *ante*, AGREEMENTS, sect. 8; see also further, *post*, PURCHASES.

Penal clause.

No. LX.

Agreement for the Sale of a Freehold Estate.

No. LX.

Sale of Freehold.

Articles &c. Between (*Vendor*) of &c. for himself his heirs (*a*) executors and administrators of the one part and (*Purchaser*) of &c. for himself &c. (*b*) of the other part *Witness* That the said (*V.*) doth hereby agree with the said (*P.*) to sell to him the said (*P.*) *All those* messuages lands &c. (*parcels*) with the appurtenants for the sum of £ (*c*) to be paid at the time and in the manner hereafter expressed *And* that he the said (*V.*) shall and will within weeks from the date hereof at his own expense furnish the solicitor of the said (*P.*) with a full and satisfactory abstract of the title of him the said (*V.*) to the whole of the said premises *And* will also at his own expense deduce a clear title thereto *And* also that he the said (*V.*) or his heirs and all other necessary (*d*) parties shall and will on or before the day of next ensuing (*e*) on receiving

Parties.

Vendor agrees to sell,

to furnish abstract of title;

that necessary parties shall join in executing conveyance.

(*a*) As to the word "heirs," see *ante*, AGREEMENTS, Pref. sect. 2.

(*b*) Or "by his attorney or agent."

(*c*) Or, if it be so agreed, say "after the rate of years' purchase according to the present annual value of ." Or "for an annuity or clear yearly rent-charge of £ payable to the said (*V.*) during his life by half-yearly payments on the day of and the day of and to be charged on the said premises and further secured by the bond of the said (*P.*) with a warrant of attorney for entering up judgment thereon." As to the consideration, see *ante*, sect. 6.

(*d*) As to necessary parties, see *ante*, sect. 4.

(*e*) If the consideration be an annuity, say "on having the said annuity secured to the said (*V.*) in manner as aforesaid."

No. LX.

*Sale of
Freehold.*Purchaser
agrees to pay
purchase-
money.Conveyance at
purchaser's ex-
pense.Vendor to pay
rates &c. to a
given day.Purchaser to
receive rents
&c. from the
same day.Time the es-
sence of the
contract.

from the said (*P.*) his executors or administrators the sum of
 £ at the request costs and charges of him the said (*P.*)
 his executors &c. execute a proper conveyance for conveying and
 assuring the inheritance and fee-simple of and in the said mes-
 suages lands and hereditaments with the appurtenants unto the
 said (*P.*) his heirs and assigns free from incumbrances (*a*) In
 consideration whereof the said (*P.*) hereby agrees with the said
 (*V.*) That provided the counsel of the said (*P.*) shall approve of
 the title of the said (*V.*) to the said premises he the said (*P.*) his
 heirs executors administrators or assigns on the execution of such
 conveyance as aforesaid shall and will (*b*) pay the said sum of
 £ unto the said (*V.*) his executors or administrators (*c*)
And it is hereby further agreed by and between the said (*V.*) and
 (*P.*) that the said conveyance shall be prepared by and at the
 expense of the said (*P.*) except a release of incumbrances or an
 assignment of outstanding terms if not before assigned *And* that
 the same shall be settled and approved of on the parts of the said
 (*V.*) and (*P.*) by their respective counsel *And that* each of them
 the said (*V.*) and (*P.*) shall pay the fees of his own counsel *And*
that the rates taxes and outgoings payable for or in respect of
 the said premises to the day of shall be discharged
 by the said (*V.*) his executors and administrators *And also* that
 the said (*P.*) his heirs or assigns shall have receive and take the
 rents and profits of the said messuages and premises from the
 day of next ensuing for his and their own proper
 use *And* (*d*) if the said conveyance shall not be executed by the

(*a*) If there be subsisting leases, and if it be so agreed, say "except only leases
 at rack-rent not exceeding years and containing only usual covenants,"
 see *ante*, sect. 3.

(*b*) If the consideration be an annuity, say "well and effectually grant the
 said annuity or clear yearly sum of £ unto the said (*V.*) and secure the
 same upon the premises in manner as aforesaid."

(*c*) If there be timber to be taken at a valuation, say "*And* shall and will
 also pay for all the timber growing on the said estate such sum of money as the
 same shall be valued at by two indifferent persons to be chosen the one by the
 said (*V.*) and the other by the said (*P.*) or an umpire to be chosen by them. In
 which said valuation it is agreed that all trees which shall be of the value of
 or upwards shall be accounted timber. And in case it should be necessary to
 postpone the valuation until the fall of the leaf that the said (*P.*) shall give to
 the said (*V.*) a bond in a sufficient penalty conditioned for the payment of the
 sum at which the said timber shall be valued within one calendar month after
 such valuation."

(*d*) Or, if it be so agreed, say, "*And* if the said (*V.*) shall not deliver an ab-
 stract of his title to the said (*P.*) or his solicitor before the expiration of one

necessary parties and the said purchase-money not paid on or before the said day of then the said (*P.*) shall from the same day pay interest for the said purchase-money (*a*) at the rate of £ per centum per annum *And further* that any trifling error or omission which may appear to have been made with respect to the quantity or other description of the said premises [so that the same be not essentially different in quality from those herein described] shall not vacate the contract but a reasonable abatement shall be made by the said (*V.*) his executors &c. *And further* that any loss or damage which may happen to the said premises by fire or otherwise or any benefit (*b*) which may accrue to it between the date of these presents and the completion of the purchase shall not in anywise affect or vacate this contract (*c*) *In witness* &c.

No. LX.
*Sale of
Freehold.*

Purchaser to
pay interest
from a given
day.



No LXI.—2.

Another (short Form).

No. LXI.
*Another
(short Form).*

Memorandum of an agreement made the day of
Between &c. The said (*V.*) in consideration of the sum of £
of lawful money of Great Britain to be paid to him by the said
(*P.*) and also of the agreement hereinafter mentioned doth agree
with the said (*P.*) that he the said (*V.*) shall and will at his own
cost and charges make out a good title and at the costs and
charges of the said (*P.*) convey and assure to him and his heirs
in such manner as counsel shall advise a good estate in fee-simple

calendar month from the date hereof or if in the opinion of the counsel of the said (*P.*) he the said (*V.*) shall not deduce a good and marketable title to the whole of the said premises then in either of these case this present contract shall at the option of the said (*P.*) be to all intents and purposes void and all reasonable expenses incurred by him in investigating the title shall be borne by the said (*V.*) his heirs executors or administrators." A similar provision may also be inserted in case the purchase-money be not paid on the day appointed. As to the consequences of the contract, see *ante*, sect. 8.

(*a*) As to the payment of interest, see *ante*, sect. 8.

(*b*) As to the consequences of the contract in this respect, see *ante*, sect. 8.

(*c*) If it be necessary, say, "*And further* that if any of the title deeds or writings relative to the said premises shall be found to concern other property of the said (*V.*) they shall be retained by him on his delivering at his own expense true and attested copies duly stamped and on his entering into the usual covenant to be prepared at his own expense for producing the originals."

No. LXI.
*Sale of
 Freehold.*

in *All the* allotment or allotments to be allowed and set out to him upon the commons or waste grounds of N. in the county of _____ by the commissioners empowered by an act of parliament lately passed for the inclosure thereof for or in respect of all his the said (V.'s) estate in the commons aforesaid *And* the said (P.) doth hereby agree with the said (V.) That he the said (P.) shall and will at his own expense prepare such conveyances and assurances as aforesaid and also when and as soon as the said commissioners shall make and execute their award pay to the said (V.) the sum of £ _____ as and for the purchase-money *And also* shall and will pay and discharge all sums of money which shall be occasioned by the obtaining the said act of parliament *And also* all the charges of dividing allotting and setting out the said allotment so contracted to be sold as aforesaid and of the award to be made by the said commissioners touching the same which the said (V.) would have been or shall be liable to pay in respect of the said allotment As witness our hands.

SALE OF COPYHOLD ESTATES.

- | | |
|---|---|
| 1. <i>Agreement to sell defeats Free-bench.</i> | 3. <i>Steward authorized to demand Fines.</i> |
| 2. <i>Purchaser to pay Expense of Admittance.</i> | 4. <i>To prepare Surrender.</i> |

Agreement to
 sell defeats free-
 bench.

SECT. 1. A widow will be defeated in equity of her free-bench of lands, of which her husband died seised, by his agreement for the sale, although he die before the surrender, *Hinton v. Hinton*, 2 Ves. 631.

Purchaser to
 pay expense of
 admittance.

2. In the absence of any stipulation to the contrary, the expense of the surrender and admittance, including the fine to the lord, which is not payable until admittance, *Rex v. Ld. of the Manor of Hendon*, 2 T. R. 484, must be borne by the purchaser, *Drury v. Mann*, 1 Atk. 96, although the vendor agrees to surrender at his own expense, *Graham v. Sime*, 1 E. 632. But if the vendor have not been previously admitted, he must bear the expense of his own admittance, in order to enable him to make a surrender to the purchaser, 1 Atk. 96, n.

Steward autho-
 rized to demand
 fines.

3. The 48 Geo. 3, c. 149, authorizes stewards, previously to the acceptance of any surrender, or the granting or making of any admittance, voluntary grant, or licence to demise in court, to demand the payment of all fines for the same, and for the copy of court-roll.

4. Where it is the custom of the manor for the steward to prepare the surrender, he may insist upon so doing, *Rex v. Rigge*, 2 B. & A. 550.

Sale of Copyholds.

To prepare surrender.

No. LXII.

Agreement for the Sale of a Copyhold Estate of Inheritance.

No. LXII.

Sale of Copyholds.

Articles &c. Between &c. *Witness* That the said (*Vendor*) (*a*) doth agree to sell and the said (*Purchaser*) to purchase the inheritance in fee-simple according to the custom of the manor of M. *All those* customary or copyhold pieces or parcels of land situate in the said manor &c. and containing by estimation acres more or less at or for the price or sum of £ *And* the said (*V.*) doth promise and agree to deliver unto the said (*P.*) within one month from the date hereof at his own expense a full and satisfactory abstract of the title of him the said (*V.*) thereto *And also* that he the said (*V.*) and all other necessary parties shall and will on or before the day of next ensuing duly surrender the said premises according to the custom of the manor to the use of the said (*P.*) his heirs &c. or as he or they shall direct to be holden at the will of the lord of the manor free from all incumbrances whatsoever except the quit-rents and the customary dues and services *And that* the said (*V.*) shall at the time of such surrender enter into the usual covenants for the title *And* the said (*P.*) doth hereby promise and agree That on such surrender being made and such covenants being executed as aforesaid he the said (*P.*) shall and will pay to the said (*V.*) the said sum of £ of &c. *And* shall pay the (*b*) expenses of the said surrender (*c*) and all fees (*d*) and fines upon the surrender and admission of the said (*P.*) to the said premises and that the said deed of covenants shall be prepared by and at the expense of the said (*P.*) *In witness &c.*

Vendor agrees to sell and purchaser to buy.

Vendor agrees to furnish abstract, and to surrender premises;

and enter into covenants for title.

Purchaser agrees to pay purchase-money and expenses, &c.

(a) Consequences of the contract, see *ante*, sect. 8.

(b) As to expenses, see *ante*, sect. 2.

(c) Preparing surrenders, see *ante*, sect. 4.

(d) Payment of fines, see *ante*, sect. 3.

No. LXIII.

Purchase by
Agent.

No. LXIII.

*Agreement for the Sale of a Freehold and Copyhold Estate
to an Agent.*

Obs. As to when an agent must be authorized by a writing and when by parol, see *ante*, Pref. *Principal and Agent*.

Articles &c. Witness That the said (*Vendors*) do hereby agree with the said (*Agent for purchaser*) as agent as aforesaid to sell to him and the said (*A.*) as such agent doth hereby agree to purchase of the said (*V.*) *All that* freehold and copyhold mesuage or tenement and farm with the barn stables yards gardens orchards lands meadows pastures feedings commonage timber and other trees rights members and appurtenants thereunto belonging which premises are situate at &c. and contain by survey 24 acres [and which said lands are to be taken at that measurement be the same more or less] and are now in the occupation of &c. or their undertenants at or for the price of £ whereof £ have been paid by (*A.*) before the execution of these presents to the said (*V.*) as they do hereby respectively acknowledge *And* the said (*V.*) do hereby further agree with the said (*A.*) as such agent that they the said (*V.*) shall at their expense deduce a clear title to the said hereditaments and premises and shall on or before the day of next on receiving from the said (*Purchaser*) or (*A.*) or either of them the sum of £ residue of the said purchase-money at the costs of the said (*P.*) or (*A.*) execute at aforesaid a proper conveyance surrender and assurance to be settled by their respective counsel for conveying and assuring the fee-simple and inheritance of the same premises unto the said (*P.*) his heirs or assigns or unto such person or persons as he or they shall appoint free from all incumbrances except the land tax of and a quit rent of payable to the manor of at *And* the said (*A.*) as such agent as aforesaid hereby agrees with the said (*V.*) that he shall &c. (*pay purchase-money*) *And* it is hereby agreed by and between the parties hereto that all taxes rates and outgoings payable for the said premises on the said day of shall be paid by the said (*V.*) *And that* the said (*P.*) shall be put in quiet possession of the premises at that time and be entitled to the rents and profits thereof thenceforth *And also* that the said (*P.*) shall be entitled to take the growing crops of corn hay and clover at a valuation to be made thereof by two

indifferent persons one to be chosen by the said (V.) and the other by the said (P.) or in case they shall disagree then by a third person to be chosen by such two persons such valuation to be made and concluded between the day of and the day of next and immediately after the completion thereof possession of the said crops shall be delivered to the said (P.) upon the paying to the said (V.) a deposit of £ per cent. in part of the amount of such valuation [and giving security for payment of the remainder thereof on the said day of next] but in case the said (P.) shall decline to take the said crops then the said (V.) shall be at liberty either to harvest or sell the same by public auction or private contract And it is further agreed that the said (P.) shall pay (*for certain fixtures enumerated*) also for the muck mixtures or compost and the labour also for all such other things as are customary between an outgoing and incoming tenant as the same shall be agreed upon and valued by the said two indifferent persons or third person as aforesaid And that such valuation shall be made three weeks before Michaelmas and the amount thereof paid to the said (V.) on the said day of .

In witness &c.

Received the day and year first above written of and from the said (P.) by the hands of the said (A.) as such agent aforesaid the sum of £ in part of the consideration money to be paid to us.

Witness G. B.

(Vendors.)

No. LXIV.

Agreement between two Guardians respecting the Purchase of an Estate by them for their Infant Ward.

No. LXIV.
By Guardians.

Articles of &c. Between A. B. of &c. of the one part and B. C. of &c. of the other part *Whereas* the said A. B. and B. C. are testamentary guardians of E. D. an infant under the age of 21 years *And whereas* the said E. D. is under the will of his uncle tenant in tail of the manor of G. in &c. *And whereas* certain lands and hereditaments at in part of the estates of the coheiresses of &c. some time since were offered to sale and the same have been purchased by and conveyed to the said A. B. and B. C. their heirs and assigns at or for the price or sum of £ *And whereas* the said lands &c. lie contiguous to or intermixed with

No. LXIV.
By Guardians.

the estates of which the said E. D. is tenant in tail under the will of his said uncle and are in all respects a desirable purchase for the said E. D. and the said A. B. and B. C. agreed to purchase the same and being possessed of certain sums of money belonging to the said E. D. the infant they the said A. B. and B. C. advanced the sum of £ part of the said monies in the purchase of the said estate *Now these presents witness* and it is hereby declared between and by the said A. B. and B. C. in manner following that is to say That the sum of £ advanced by them in purchase of the said estate at was the proper money of the said E. D. the infant and by them the said A. B. and B. C. advanced out of his personal estate and that when and as soon as the said E. D. shall attain the age of 21 years he the said E. D. shall be offered the said purchase on condition of his agreeing to ratify and confirm the said purchase and all accounts and transactions relating thereto and that if he shall accept and agree to the said purchase on these terms Then and in that case the said estate shall be immediately conveyed to him the said E. D. his heirs or assigns or as he or they shall direct or appoint but that if the said E. D. shall refuse to accept the said purchase upon the terms aforesaid Then and in that case they the said A. B. and B. C. their heirs and assigns shall retain the same for their own proper use and benefit and shall be considered as having originally purchased the same with their own respective monies advanced by them respectively in equal shares and proportions and under an agreement that there shall be no survivorship between them and shall hold the same as if originally seised thereof as tenants in common in fee-simple and not as joint tenants *And further* that every benefit or advantage which may be derived or any loss or detriment which may be sustained by reason of their having made the said purchase shall be borne by them the said A. B. and B. C. and their respective heirs executors and administrators in equal shares and proportions *In witness &c.*

Agreement whereby Part of Purchase Money is to remain in Purchased Lands until Minors attain 21—see post, PURCHASES.

No. LXV.

Agreement for the Sale of Leasehold Premises, with a Covenant to take the Furniture.

No. LXV.

Sale of Leaseholds.

1. *Executors bound by Agreement.*
2. *Production of Lessor's Title.*
3. *Indemnity against Rents and Covenants.*

4. *Taking a New Lease.*
5. *Not Assigning without Lessor's Consent.*

SECT. 1. An agreement for the sale of a leasehold interest will be binding on the personal representatives, although not named, *Smith v. Watson*, Bunb. 55.

Executors bound by agreement.

2. Provision ought to be made in the contract to assign a lease as to the production of the lessor's title. A court of equity will not compel specific performance where the vendor is plaintiff, unless he can show a good title in the lessor to the estate out of which it is granted; and consequently, a vendor who is either unwilling or unable to show a title must expressly stipulate to that effect in the contract, *White v. Foljambe*, 11 Ves. 337; *Deverell v. Ld. Bolton*, 18 ib. 505; *Fildes v. Hooper*, 2 Mer. 424.

Production of lessor's title.

3. A purchaser of a leasehold is bound, it seems, to indemnify the lessee against the rents and covenants in a lease, although the vendor may not, at the time of the contract, have made any stipulation to that effect, *Pember v. Mathers*, 1 B. C. C. 52; *Stains v. Morris*, 1 Ves. & Bea. 13.

Indemnity against rents and covenants.

4. Under a contract for the residue of a term, a purchaser will not be compellable to take a new lease, *Mason v. Corder*, 7 Taunt. 9.

Taking a new lease.

5. Where there is a clause in a lease against assigning without the lessor's consent, the vendor is bound to procure such consent, *Lloyd v. Crisp*, 5 Taunt. 249; *Mason v. Corder*, 7 Taunt. 9; *S. C.* 2 Marsh. 232.

Not assigning without consent.

Articles &c. Between &c. as follow The said (*Vendor*) in consideration of the sum of £ to be paid as hereinafter is mentioned doth hereby for himself his &c. (*a*) agree with the said (*Purchaser*) his &c. that he the said (*V.*) shall and will on or before the day of convey unto the said (*P.*) at his own costs and charges *All that* leasehold messuage &c. (*parcels*) for the residue of the term now to come and unexpired granted to the said (*V.*) by virtue of an indenture of lease bearing date on or about the day of subject to such payments con-

Vendor agrees to assign premises for the residue of the term.

(a) As to the naming of executors, &c. see *ante*, sect. 1.

No. LXV.

*Sale of
Leaseholds.*

Purchaser
agrees to pay
purchase-
money.

Furniture to be
taken at a valu-
ation.

Purchaser
agrees to pay
for the furniture
when valued.

ditions and covenants as in the said lease are reserved to be paid kept and performed by the lessee (*a*) in consideration whereof the said (*P.*) doth hereby agree with the said (*V.*) that he the said (*P.*) shall and will well and truly pay unto the said (*V.*) his executors or administrators the sum of £ of lawful money of Great Britain on or before the day of and on the execution of the conveyance by which the said premises are to be granted and conveyed as aforesaid in full for the purchase of the said premises *And* it is hereby further agreed by the parties hereto that such household furniture goods and effects as the said (*V.*) shall think proper to leave in and about the said premises at the time that he shall quit possession thereof shall immediately afterwards be valued and appraised by two indifferent persons which the said parties hereby agree to choose for that purpose and that the same shall be taken by the said (*P.*) according to such appraisement *And* (*b*) the said (*P.*) doth hereby agree that he the said (*P.*) shall and will within months after the said appraisement shall be delivered to him pay such sum of money as the same household furniture (*or* "stock" &c.) shall be appraised or valued at as aforesaid *In witness &c.*



No. LXVI.

*Sale of
an Advowson.*

No. LXVI.

Agreement for the Sale of an Advowson, and also for a Lease of the Tithes.

Obs. 1. The grant of an advowson during a vacancy is void, *quoad* the next presentation, *Grey v. Hesketh*, Ambl. 258. Semble, that a contract for the sale of the next presentation, the parties at the same time knowing the incumbent to be at the point of death, is not simoniacal, *Fox v. The Bishop of Chester*, 2 B. & C. 635; *Barrett*

(*a*) As to the necessity of any stipulation in the contract for indemnifying the vendor against the rents and covenants in the lease, see *ante*, sect. 3. Also as to the covenant respecting the title of the lessor, see *ante*, sect. 2.

(*b*) If the agreement be to sell the stock of a farm, say, "*And* the said (*V.*) doth agree to bargain and sell to the said (*P.*) All the corn grain grass and roots now growing on the said farm or being in or upon any part of the said premises *And also* all the horses cows pigs carts waggons ploughs and all other live and dead stock belonging to the said (*V.*) and on the said premises the whole to be taken at an appraisement or valuation to be made by two indifferent persons whom the said parties hereby agree to choose &c. for that purpose and that the same shall be taken &c." (*as above*).

v. *Glub*, Dick. 516. So by the 12 Ann. s. 2, c. 12, if any clerk purchase for himself the next presentation, and is presented thereon, the next presentation is void.

No. LXVI.
*Sale of
an Advowson.*

2. If a church become vacant by the promotion of the incumbent to a bishopric, the queen, by her prerogative, has the next presentation; provision is therefore frequently made for this event in the contract for the purchase of an advowson.

Articles &c. Witness That in consideration of the sum of £ to be paid to &c. (*Vendor*) by &c. (*Purchaser*) at the time hereinafter mentioned he the said (*V.*) for himself &c. (*agreement to make out a title*, see No. LX.) and at the request costs &c. on or before &c. well &c. convey &c. unto &c. (*P.*) his &c. *All that* advowson donation right of patronage and presentation of in and to the rectory of aforesaid with the rights members and appurtenants and the inheritance thereof free from all incumbrances whatsoever charged upon or in anywise affecting the said advowson or the incumbent thereof save and except the land-tax amounting to £ per annum a tenth amounting to £ per annum synodals and procurations amounting to £ *Now these presents further witness* and it is hereby declared and agreed by and between the parties hereto That in case of the death resignation cession deprivation or relinquishment of the said (*V.*) on or before the day of next ensuing he the said (*V.*) his heirs &c. shall and will duly present such parson to the said rectory as the said (*P.*) shall nominate *And that if* the presentation should devolve on the crown in consequence of the present incumbent being promoted to a bishopric before the day of then and in such case so much of the purchase-money as shall be equal to the value of the next presentation to be ascertained by two indifferent persons to be appointed in the usual manner or by their referee to be chosen by them if they disagree (*P.*) (*or "this contract shall not be affected thereby nor shall the said (P.) be entitled to any deduction out of the said purchase-money," as the case may be*) *And* the said (*V.*) doth hereby further agree That upon payment of the said sum of £ as hereinafter mentioned he the said (*V.*) shall and will at the request &c. of the said (*P.*) grant unto the said (*P.*) a good and valid lease of all the tithes and compositions for tithes belonging or payable to the said rectory or the rector or patron in respect of the same and the tithe barn and glebe lands belonging to the said rectory for and during the term of years to be completed from the day of last if the

Vendor agrees to make out a title, and to convey advowson.

In case the church be vacant, to present nominee of the purchaser.

To grant a lease of the tithes.

No. LXVI.

*Sale of
an Advowson.*Covenant that
vendor shall
repair barn and
parsonage &c. ;and provide a
curate ;and pay all
taxes &c.Purchaser
agrees to pay
purchase-
money, accept
lease, and pay
expense of con-
veyance &c.

said (V.) should so long live or remain incumbent of the said rectory at or under the yearly rent of £ payable on the day of in which lease so to be granted as aforesaid shall be contained a covenant on the part of the said (V.) immediately on the execution of the said lease to put the barn in good and tenantable repair and during the continuance of the said lease to keep the same barn and also the parsonage-house belonging to the same with the appurtenants and also the chancel of the church of aforesaid in good and tenantable repair except such repairs as may be required in consequence of any voluntary dilapidations by the said (P.) his executors &c. *And also* shall and will during the said lease at his own expense provide a curate to perform the duties of the said church of aforesaid *And* it is further agreed That in such lease it shall be provided that the land-tax and all synodals procurations and tenths and all other taxes rates assessments and payments in respect of the said tithe barn and glebe lands shall be paid by the said (V.) and that it shall be lawful for the said (P.) to deduct out of the said annual rent all such sums of money as he shall pay on account of the said land-tax tenths synodals procurations and all other rates and assessments whatsoever *And* the said (P.) for himself his heirs &c. doth hereby agree to pay the said sum of £ upon the execution of the said conveyance and to accept the said lease *And* that the conveyance and the lease be granted to the said (P.) and also the counterpart thereof shall be prepared by him at his own costs and charges, but that in all other respects each of the said parties shall pay the fees of his own counsel and the charges of his own solicitor *In witness &c.*

No. LXVII.

*Sale of a
Boarding School.*

LXVII.

*Agreement to assign a Boarding-School, Lease of the Premises,
and Furniture.*

Vendor agrees
to assign good-
will of the
school and the
messuage ;

Articles of &c. Between (Vendors) of &c. of the one part and (Purchaser) of the other part *Witness* That for and in consideration of the sum of £ to be paid on the day of next ensuing they the said (V.) do hereby agree to relinquish and assign *All that* the boarding-school conducted by them at and *All that* the messuage or tenement garden and premises where the same has been heretofore carried on and to execute on receipt thereof a good and valid assignment in the

law of the said boarding-school and premises and also the indenture of lease by which the said (V.) hold the same for the residue of the term then to come and unexpired but subject to the rent and covenants therein reserved and contained *together* also with the two policies of insurance whereby the said premises and the household furniture goods and effects therein contained are insured from fire *And also* shall and will pay all rent and taxes due for the said messuage up to the said day of now ensuing *And* the said (P.) doth hereby covenant promise and agree with and to the said (V.) that she the said (P.) shall and will on the said day of well and truly pay to them the said (V.) the full sum of £ of lawful &c. as a premium or consideration for the said boarding-school messuage &c. and shall and will accept such assignment thereof respectively as is hereinbefore mentioned *And* it is hereby mutually agreed by the parties hereto that a valuation shall forthwith be made of the household furniture goods chattels linen fixtures and things which are in and upon the said premises by two persons one to be chosen by the said (V.) and the other by the said (P.) *And* the said (P.) doth hereby agree to pay unto the said (V.) calendar months after the said day of next ensuing the full amount at which the said furniture and effects shall have been valued *In witness &c.*

No. LXVII.
*Sale of a
Boarding School.*

also policies of insurance.

Purchaser agrees to pay consideration.

Valuation.

Purchaser agrees to pay the amount.

Agreements following and referring to Conditions of Sale—see post, CONDITIONS OF SALE.

Agreements as to Shipping—see post, SHIPPING.

LXVIII.

Agreement for letting Purchaser into Possession before Acceptance of Title.

No. XLVIII.
As to Title.

Obs. As a rule, a purchaser by entering into possession before a conveyance is executed, is held to waive all objections to the title, *Fludyer v. Cocker*, 12 Ves. 25, unless under special circumstances, as where he takes possession at the instance of the vendor, and on his assurance that the title is good, *Vancouver v. Bliss*, 11 Ves. 458.

Effect of taking possession.

No. LXVIII. So, if possession is authorized by the contract to be taken before the title is made, that will not be deemed a waiver, *Stevens v. Guppy*, 3 Russ. 171. And if a purchaser wishes to have immediate possession, he may protect himself by a special clause, as in the following precedent.

As to Title.

Memorandum of an agreement &c. *Whereas* by a contract entered into the day of the said (*Vendor*) agreed to sell and the said (*Purchaser*) agreed to purchase certain freehold estates comprised in the schedule thereunder written *Now these Presents witness* and it is hereby declared and agreed by and between the said parties that the said (*P.*) may be let into and take immediate possession of the said estates so contracted to be sold to him as aforesaid for his own benefit in as full and ample manner as if a conveyance of the same had been executed: Provided always that such (*a*) taking possession shall not be deemed to be an acceptance of the title or as an abandonment on the part of the said (*P.*) of his right to have all valid objections thereto fully removed and all defective evidence supplied at the expense of the said (*V.*) *And* the said (*V.*) doth hereby agree that he will forthwith proceed with the said contract, and remove all valid objections to be made to the said title, and supply all evidence which may be defective therein.

As witness our hands the day and year first above written.

A. B.

C. D.



No. LXIX.

*Waiver of
Agreement.*

No. LXIX.

Agreement that certain Acts shall not be deemed a Waiver of an Agreement.

Recital of
agreement.

Articles &c. Between H. B. of &c. of the one part and D. B. of &c. of the other part *Whereas* on the day of now last past the said H. B. and D. B. did enter into an agreement of that date under their hands for the division of the lands comprised in a settlement of and touching several matters relating thereto *And whereas* part of the lands comprised in the said settlement and mentioned to be subject to the said agreement have been sold by the said H. B. to T. C. at or for the price or sum of £ and the sum of £ is to be allowed by

(a) As to the necessity of this provision, see *Observation, supra*.

the said H. B. to the said T. C. out of his said purchase-money on account of some objections taken to the title to the said lands *And whereas* the said D. B. has been requested to join in a conveyance of the lands so agreed to be sold to the said T. C. as aforesaid and has consented so to do upon having this agreement entered into between him and the said H. B. *Now these Presents witness* and it is hereby agreed and declared that the said D. B. shall not by executing the said intended conveyance be debarred or precluded from any benefit under the said intended agreement of the said day of now last past or be held deemed construed or taken to have waived renounced or departed from the terms or stipulations of the said agreement *And* that on the contrary thereof the said agreement shall remain in full force and virtue and be binding on the said H. B. and D. B. notwithstanding the conveyance to be executed by the said D. B. as aforesaid *And* it is hereby also agreed and declared that under the terms of the said agreement the said H. B. shall notwithstanding the aforesaid abatement be considered to have received the full sum of £ from the produce of the said estate as and for the purchase of the lands sold and to be conveyed to T. C. aforesaid and that on the division of the residue of the said lands comprised in the said settlement the said H. B. shall be deemed and taken to have received lands to that amount in part of his share of the same *And* that in the allotment to be made to and for the said D. B. respect shall be had thereto and that in the first place and before any division between the said parties lands of equal value shall be allowed to him in lieu of the lands sold to the said T. C. and valued at the sum of £ as aforesaid

In witness &c.



No. LXX.

Agreement for settling Litigations and Questions arising under a Will.

Articles &c. Between M. W. of &c. of the one part and E. S. of &c. of the other part *Whereas &c. (recite the will &c.)* *Now these Presents witness* and the said M. W. doth hereby for herself her heirs executors and administrators covenant promise and agree to and with the said E. S. his heirs and assigns in manner following that is to say That she the said M. W. her heirs and assigns shall or will with all convenient speed release and convey

No. LXIX.
*Waiver of
Agreement.*

No. LXX.
*Settling
Litigations
under Will.*

No. LXX.

*Settling
Litigations
under Will.*

the said messuages &c. unto and to the use of the said E. S. his heirs and assigns for ever free from all incumbrances whatsoever made done or committed by the said M. W. or any person or persons claiming or to claim by through or under her *And also* shall and will do all reasonable acts and deeds whatsoever for the putting the said said E. S. into the quiet and peaceable enjoyment thereof *And also* shall and will deliver up to the said E. S. his heirs and assigns all title deeds writings and muniments whatsoever that relate to or concern the said premises *And these Presents further witness* and the said E. S. doth hereby for himself his heirs executors and administrators covenant promise &c. to and with the said M. W. that he the said E. S. his executors and administrators shall and will with all convenient speed assign and transfer all the personal estate of the said J. W. deceased and all the interest and estate of the said E. S. therein unto the said M. W. her executors administrators and assigns *And* shall and will if necessary permit and suffer the said M. W. her executors administrators or assigns to use his and their name or names in any action or actions suit or suits that shall or may be sued commenced or prosecuted against the said S. B. D. the executor as aforesaid or any other person or persons whomsoever to recover such personal estate or any part thereof *And also* shall and will do all reasonable acts deeds and things whatsoever for the putting the said M. W. in the actual possession and enjoyment of the said personal estate and every part thereof *And* it is hereby also agreed between the said parties hereto that at the time of executing the forementioned deeds and conveyances they the said E. S. and M. W. shall and will seal and deliver each one to the other mutual general releases of all claims and demands whatsoever from the beginning of the world to the day of the date of such release.

ANNUITY.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. <i>Definition of an Annuity.</i>
<i>Distinction between Annuity and Rent-charge.</i> 2. <i>How granted.</i>
<i>By the words "Perceive" and "Receive."</i> 3. <i>To whom granted.</i> 4. <i>Apportionment of Annuity and Rent-charge.</i> 5. <i>When an Annuity or Rent-charge goes to the Heir.</i> | <ol style="list-style-type: none"> 6. <i>When a Wife is bound by a Grant by her Husband.</i> 7. <i>Power of Distress.</i> 8. <i>Power of Entry.</i> 9. <i>Warrant of Attorney, Bond, and Covenant to pay.</i> 10. <i>Redemption of Annuity.</i> 11. <i>Effect of making the Receipts of Trustees valid Discharges.</i> 12. <i>Stamp.</i> |
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SECT. 1. An annuity is a yearly payment of a certain sum of money granted to another for life or years, or in fee, Co. Litt. 144 b. Definition.
If a man seised of land grant a yearly rent, issuable out of the land, to another in fee-tail or for term of life, &c., with a clause of distress, this is a rent-charge. The principal difference between an annuity and a rent-charge is the remedy which the law gives for the recovery of the arrears. If an annuity issue out of land, as it now most commonly does, the grantee has his election to bring a writ of annuity, and, charging it upon the person, to make it personal, or to distrain upon the land so as to make it real, Co. Litt. 144 a. But he cannot have them both together, for if he recover by a writ of annuity, then the land is discharged of the distress; but if he distrain for the arrears, and avow the taking of the distress in a court of record, then is the land charged, and the person of the grantor discharged, Litt. s. 219. Distinction between annuity and rent-charge.
As few grants of annuities are without a covenant for payment expressed or implied, an action of covenant may, and now mostly is, brought for the recovery of the arrears when a distress cannot be made. When the grantor of an annuity wishes his person to be discharged, and his land charged, a clause to that effect may be inserted in the deed, Litt. s. 220.

2. To make a good grant of an annuity, no particular technical mode of expression is necessary. If, therefore, a person intending to grant a rent-charge, do it in such a manner that it shall be void as a rent, it will be good as an annuity, for the words "to perceive" or "receive," is a sufficient charge on the person of the grantor, 1 Roll. Abr. 227; 2 Vin. Abr. 507, [E]. How granted.
By the words "perceive" and "receive."

3. If a rent-charge be granted to a man and his heirs, he shall not have a writ of annuity against the heir of the grantor, although he To whom granted.

Annuity.

has assets, unless the grant be for him and his heirs, Plowd. 457; Co. Litt. 144 b. But in the case of a corporation, which has a perpetual continuance, the successors will be bound, although not named, Harg. Co. Litt. 144, n. 2.

Apportionment
of annuity and
rent-charge.

4. By the old law, if a man had a rent-charge to him and his heirs, issuing out of certain lands, and he purchased any parcel of those lands to him and his heirs, all the rent-charge became extinct, because it could not be apportioned, Litt. s. 222. So likewise an annuity, if it were not made chargeable on the person, before the purchase, Dyer, 140; Gilb. Rents, 152. So a rent-charge, not being apportionable, if it were made payable half-yearly or quarterly, and the annuitant died in the interval between the days of payment, nothing was due for the time he lived, unless by express stipulation, *Pearly v. Smith*, 3 Atk. 260. Whether an annuity chargeable on the person only, and not on the lands, were subject to the same rule, appears to have been doubtful, *Edwards v. Countess of Warwick*, 2 P. Wms. 176. The law of apportionment has since been altered by the 4 & 5 Will. 4, c. 22; but as it does not appear to have removed all doubts, it will be safer to insert the usual stipulation for the payment of the annuity for the intervening time that has elapsed between the last payment and the decease of the annuitant.

When an an-
nuity or rent-
charge goes to
the heir.

5. By the common law, if a rent be granted to a man and his heirs generally, and he die without devising the rent, and without an heir, the rent does not escheat, but sinks into the land, Butler's n. Co. Litt. 298, n. (2). Some have supposed that the common law is so far altered by the Statute of Frauds, that an estate *pur autre vie* in a rent continues for the executors or administrators of the owner of the rent when it is not limited to his heirs; but the better opinion appears to be, that as the words of the statute, which gives estates *pur autre vie* to executors or administrators, only extend to those cases in which there can be no occupant at common law, which in rents cannot be; therefore, if such an estate be limited to a man and his heirs, and he die without devising the rent, and without heirs, it seems that his executors or administrators would not be entitled to the rent, but it would sink into the land, *Savory v. Dyer*, Ambl. 139; *Smartle v. Penhallow*, 2 Ld. Raym. 1000. When therefore it is the grantee's intention that an annuity, or rent-charge, for the life of the grantor or the lives of nominees, should form part of his personal estate, it should be limited to him, his executors, administrators and assigns, for a term of years, if the grantor, nominee or nominees, or the survivor of them, should so long live. Such an express limitation, however, does not appear to be necessary in the grant of a personal annuity *pur autre vie*, because it is not a freehold, but only a chattel, *Savory v. Dyer*, Ambl. 139; 1 Dick. 162; nor in a grant of an annuity or

rent-charge out of a term of years, for this is good for so many years as the term continues, and it is not determined by the death of the grantee, Cro. Eliz. 183; 7 Co. 25 a; 1 Roll. Abr. 831, pl. 3.

Annuity.

6. If a man be possessed of land for a term of years in the right of his wife, and grant a rent-charge and die, the wife shall avoid the charge, because she does not claim under her husband. But the husband's alienation of the term itself, or any part of it, binds the wife surviving, Hargr. Co. Lit. 184 a, n. 1; Butl. Co. Lit. 331 a, n. 1.

When a wife is bound by grant by her husband.

7. By the 32 Hen. 8, c. 34, a power of distress is given to grantees and assignees of reversions, their heirs, executors, successors and assigns; and by the 32 Hen. 8, c. 37, the same power is given to the executors and administrators of tenants in fee-simple, fee-tail, and for life: this power is extended by 4 Geo. 2, c. 28, to arrears of rent seck, rents of assize, and chief rents or quit rents. Nevertheless in respect to annuities, an express power of distress is absolutely necessary, to enable the grantee to distrain; for it appears, that where an annual sum is granted upon an incorporeal hereditament, the sum so reserved, although nominally a rent, is only a personal annuity, Co. Litt. 47 a; *Dean and Chapter of Windsor v. Gower*, 2 Saund. 302. So likewise, in creating a rent for life or years to be issuing out of a chattel interest, this clause is equally necessary, because it appears to be a rule of common law, that notwithstanding any statute, a rent cannot issue out of a mere chattel interest, 7 Co. 23, 24.

Power of distress.

8. A power of entry, as well as a power of distress, is usually given to the grantee of an annuity, or rent-charge, or to his representatives, in default of payment for a certain number of days. If this be limited by way of use, it takes effect from the Statute of Uses; but if in a grant of rent, to be issuing out of certain lands, a proviso, condition or covenant be inserted, that if the rent be in arrear, the grantee may enter; in that case he or his assignee may enter by virtue of such proviso, Butl. Co. Litt. 203 a, n. 1, unless it be otherwise expressly stipulated. (As to the clauses of distress and entry in the case of copyholds, see GRANT OF AN ANNUITY SECURED ON COPYHOLDS.)

Power of entry.

9. In order to make the person of the grantor, as well as his estate liable, it is usual to secure the payment of the annuity or rent-charge either by a warrant of attorney to confess judgment, or by a bond, or by a covenant to pay, very frequently by a bond or covenant, as well as a warrant of attorney; but where there is a covenant to pay, a bond does not add to the security, and is therefore a superfluous expense. When a warrant of attorney is taken, judgment ought to be entered up immediately, *Wild v. Sands*, 2 Stra. 7, 8; *Cowie v. Al-laway*, 8 T. R. 257. But in order to obviate the consequences of any omission so to do, a provision is mostly inserted, dispensing with the necessity to revive judgment.

Warrant of attorney, bond, and covenant to pay.

Annuity.	10. An annuity may be redeemable, but it is not necessarily so; and it is not redeemable, unless there be a special provision to that effect in the deed granting it, <i>Coverley v. Burrell</i> , 5 B. & A. 257; which ought in no case to be omitted, where it is intended by the parties that it should be redeemed.
Redemption of annuity.	
Effect of making the receipts of trustees valid discharges.	11. In the grant of an annuity as in other cases, where a trust is raised by deed or will for sale of an estate, a clause that the receipts of trustees shall be sufficient discharges, is mostly inserted, and rarely ought to be omitted; as equity will in some cases bind purchasers to see the money applied according to the trust, if they be not expressly released by the authority of the trust, <i>Abbott v. Gibbs</i> , 1 Eq. Ab. 358; <i>Balfour v. Welland</i> , 16 Ves. 151.
Stamp.	12. The grant of an annuity being a species of conveyance, an <i>ad valorem</i> stamp is required for an annuity deed by the 13 & 14 Vict. c. 97. (As to an agreement to grant an annuity, assignment of an annuity, and memorial of an annuity, see <i>the subsequent precedents</i> .)

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No. LXXI.

Agreement to grant an Annuity.

No. LXXI.
Agreement to grant Annuity.
 A feme covert may enter into an agreement to grant an annuity.

Obs. 1. An agreement for the grant of an annuity is sometimes entered into for the purpose of completing the transaction at some future period, and may be entered into on the part of a feme covert, with respect to her independent property, *Essex v. Athins*, 14 Ves. 542. Such an agreement need not be memorialized, as it is not within the 53 Geo. 3, c. 14, *Jackson v. Lever*, 3 B. C. C. 605; *Neild v. Smith*, 14 Ves. 491; but it is frequently required by way of precaution.

Specific performance when enforced.

2. Specific performance of an agreement to grant an annuity, as a consideration for the purchase of an estate, will be enforced, although the vendor die previous to the completion of the contract, *Mortimer v. Capper*, 1 B. C. C. 156; *Jackson v. Lever*, 3 B. C. C. 605.

Grantor agrees to grant an annuity.

Articles &c. Between (*grantor*) of &c. of the one part and (*grantee*) of &c. of the other part *Witness* That the said (*grantor*) in consideration (a) of the sum of £ doth hereby agree to grant

(a) If the purchase-money be not all paid at once, then say, "The sum of £ at the execution of the said securities and the further sum of £ within the space of calendar months next ensuing."

unto the said (*grantee*) an annuity or clear yearly sum of £ (a) during the life of the said (*grantor*) to be paid quarterly from the time of granting the same with a proportional part (b) up to and inclusive of the day of his death to be charged upon and issuing out of all those freehold messuages tenements and hereditaments of the said (*grantor*) situate at in the county of and to be further secured by the bond and warrant of attorney to confess judgment of the said (*grantor*) And the said (*grantor*) shall and will deliver unto the said (*grantee*) on or before the day of next a full and perfect abstract of the title of him the said (*grantor*) to the said messuages tenements and hereditaments (c) And also shall and will demise or convey by sufficient and proper conveyances the same hereditaments and premises unto a person or persons to be named by the said (*grantee*) in such manner and form and with such powers provisoes conditions covenants and agreements in the said deeds or instruments to be contained as are usual in like cases particularly a proviso enabling the said (*grantor*) to repurchase the said annuity on giving six calendar months notice for that purpose and on paying all arrears &c. (d) And that the charges and the expenses attending the granting and securing the said annuity shall be borne by the said (*grantor*) And the said (*grantee*) in consideration of the premises doth hereby agree to pay unto the said (*grantor*) the sum of £ at the time of the execution of the said securities (or the sum of £ at the execution of &c. and the further sum of £ on the day of &c. as the case may be.)

No. LXXI.
Agreement to grant Annuity.

To secure payment by warrant of attorney.

To make out good title,

convey messuages, &c.

and pay all expenses.

Grantor to pay the consideration money.

(a) Or, if it be so agreed, "during the life of the grantee," or "during the lives of nominees or the longest liver of them," or "for a term of years determinable on lives."

(b) As to the reason for this clause, see Pref. s. 4.

(c) If the annuity be secured on leasehold premises, and it be so agreed, say, "But the said (*grantor*) shall not be required to produce further evidence of his title to the said premises than the said lease and all deeds relating thereto." See *ante*, AGREEMENT TO GRANT A LEASE, s. 6.

(d) If the annuity be granted during the life of the grantor, add, "Also a covenant that the said (*grantor*) shall at his own expense appear at any office in London or Westminster that his life may be insured." If necessary also add, "And also that the said (*grantor*) shall at his own expense insure such parts of the said premises as are liable to be damaged or destroyed by fire."

No. LXXII.

No. LXII.

Bond to secure
Annuity.*Bond to secure the Payment of an Annuity to a former Mistress.*Illegality of
consideration
vitiates a bond.

Obs. 1. It is a rule both of law and equity, that *ex turpi contractu actio non oritur*; any consideration therefore which is against the rules and claims of decency will vitiate the contract; but courts of law as well as those of equity distinguish between considerations past and considerations future, and consequently a bond purporting to be in consideration of past cohabitation between the obligor and the obligee has been held to be good, 2 Wils. 339; Ambl. 641; Forr. 153; 1 Fonbl. Eq. 228.

2. As to the memorial of the bond, see subsequent *Precedent of a Memorial*.

Stamp.

3. A bond given as a collateral security for the payment of an annuity upon the original creation and sale thereof, where the same shall be granted or conveyed or secured by any other deed or instrument is liable to and charged with the *ad valorem* duty imposed by law on conveyances upon the sale of any property, where such *ad valorem* duty shall not exceed 20s., such bond shall be chargeable with a stamp duty of equal amount with the said *ad valorem* duty; and where such *ad valorem* duty shall exceed 20s., such bond shall be chargeable with the duty of 20s. A bond given as the only or principal security for the payment of any annuity upon the original creation and sale thereof, the same *ad valorem* duty as on a conveyance in consideration of the sum or value given or agreed to be given for the purchase of such annuity. A bond given to secure an annuity without any valuable consideration is charged with a stamp duty of 1l., where the annuity is under 50l. per annum; 2l., where the annuity exceeds 50l. and is under 100l.; and where the same exceeds 100l., 2l. for every 100l. and fractional part of 100l.

Recital of lease
and release to
secure payment
of an annuity.

Know all Men by these presents &c. (see BOND.) *Whereas* by indenture bearing date the day of and made between the above bounden (*Obligor*) of the one part and the said (*Trustees*) of the other part certain hereditaments therein described situate lying and being &c. were demised and assured by the said (*O.*) to the said (*T.*) their executors administrators and assigns from the day of the decease of the said (*O.*) during the term of years without impeachment of waste *In trust* yearly and every year after the decease of the said (*O.*) during the life of H. H. therein named and described by the ways and means therein mentioned to raise and levy one annuity or yearly sum of £ free from all taxes and deductions whatsoever and to pay and apply the same by two half yearly payments on the day of and the day of in every year the first payment to be made on such of

the said days as should happen next after the decease of him the said (O.) into the proper hands of her the said H. H. whether covert or sole or unto her order to be signed by any note or writing from time to time after each of the said half yearly payments should have become due but not otherwise for her sole and separate use and benefit and disposition during her life independent of any future husband And so that she might not whether covert or sole at any time or times whatsoever make any assignment or disposition by way of anticipation of the said annuity of £ or any part thereof which should not actually have accrued or become due to the intent that the same might not be subject or liable to the debts of any future husband of the said H. H. but always remain for her maintenance and support And it was thereby declared that the receipt and receipts of the said H. H. or of the person to whom she might appoint the said annuity or any part thereof to be paid in manner aforesaid should notwithstanding her coverture (if married) be a sufficient release and discharge for the same or so much thereof as in such receipt or receipts should be expressed to be received And whereas in consideration of the past services of the said H. H. and from motives of concern for her interest the said (O.) is desirous of settling upon her an annuity of £ to commence immediately in addition to the said annuity of £ secured to her by the last in part recited indenture and for the purpose of carrying the intention of the said (O.) into effect he hath executed the above-written bond subject to the condition hereinafter contained for making void the same Now the condition of the above-written obligation is That if the above bounden (O.) shall and do henceforth yearly and every year during the life of the said H. H. well and truly pay unto the said (T.) or the survivor of them or the executors or administrators of such survivor (in addition to the said annuity of £ secured by the said in part recited indenture) one annuity or yearly sum of £ free from all taxes and without any deduction whatsoever by equal half-yearly payments on the day of and the day of in every year the first of such half-yearly payments to be made on the day of next ensuing the date of the above-written bond (a) to the intent that the same

No. LXXII.

*Bond to secure
Annuity.*Of grant of an
annuity.

Condition.

(a) If it be so agreed, add, "or if the said H. H. shall happen to die between any of the said feasts or quarter days whereon the said annuity is made payable to them respectively then if the said (*obligor*) his heirs &c. shall and do pay or cause to be paid unto the said (T.) or the survivor of them a proportionate part

No. LXXII. may be applied by them the said (T.) and the survivor &c. Upon such trusts for the separate use of the said H. H. as in the said Bond to secure Annuity. in part recited indenture are expressed concerning the said annuity of £ Then &c. (see *post*, BONDS.)

—♦—

Bond for Payment of an Annuity,—see post, BONDS.

—♦—

No. LXXIII.
Grant of
Annuity secured
on Freeholds.

No. LXXIII.

Grant of an Annuity for the Life of the Grantor secured on Freeholds. (General Precedent,)

Stamp.

Obs. 1. As to stamps required for this deed, see *ante*, Pref. s. 12.

2. As to the forms necessary to be observed in order to render an annuity deed valid, see *post*, MEMORIALS.

Parties.

This Indenture made the day of in the year of the reign &c. and in the year of our Lord 18 Between (grantor) of &c. of the first part (grantee) of &c. of the second part and (trustee) of &c. a trustee named and appointed by the said (grantee) for the purposes hereinafter mentioned of the third part Whereas the said (grantor) is seised of or entitled to the several messuages lands and hereditaments &c. And whereas the said (grantee) hath contracted with the said (grantor) for the absolute purchase of one annuity or clear yearly rent-charge or sum of £ during the life of the said (grantor, or grantee, or nominees, "or the survivor of them," as the case may be) free from taxes and without any deduction whatever subject nevertheless to a proviso or agreement for the repurchase of the same hereinafter contained (a) And whereas for securing the payment of the said annuity or clear yearly sum of £ the said (grantor) by his certain warrant of attorney bearing even date with these presents hath authorized A. B. and C. D. attornies of her Majesty's Court of Queen's Bench to confess judgment against him

Recital of
seisin.
Of contract for
purchase.

Of warrant of
attorney.

of such annuity or yearly sum according to the time which the said H. H. may happen to live after the then last quarter's payment shall herein become due to the said H. H. without any deduction or abatement whatsoever."

(a) If it be so agreed, say, "And whereas the said (grantor) by his bond or obligation in writing bearing even date with these presents hath become bounden to the said (grantee) in the penal sum of £ with the condition thereunder written for making void the same upon payment of the said annuity or yearly sum at the times and in manner hereinafter mentioned." As to the necessity of a bond, see *ante*, Pref. sect. 9.

in an action of debt for the sum of £ and costs of suit
And whereas it was agreed upon the treaty for the purchase of
the said annuity that for the further securing unto the said (*gran-*
tee) his executors administrators and assigns payment of the said
annuity or &c. of £ the same should be charged upon and
issuing out of the said messuages or tenements lands and here-
ditaments *And* it was further agreed between them the said
(*grantor*) and (*grantee*) that the costs and expenses attending
the contract for the said annuity and for preparing and perfecting
the securities for the same and for inrolling a memorial thereof
should be borne and paid by the said (*grantor*) *Now this In-*
denture witnesseth That in pursuance of the said in part recited
agreement and in consideration of the sum of £ to the
said (*grantor*) in hand well and truly paid by the said (*grantee*)
at or before the sealing and delivery of these presents the receipt
whereof the said (*grantor*) doth hereby acknowledge and of and
from the same and every part thereof doth acquit release and
discharge the said (*grantee*) his executors and administrators by
these presents He the said (*grantor*) *Doth* give grant bargain
and sell unto the said (*grantee*) his executors administrators and
assigns during the natural life of the said (*grantor*) *One annuity*
or clear yearly rent-charge or sum of £ to be issuing
and payable out of and charged and chargeable upon *All that*
messuage or tenements &c. *To have and to hold* receive
perceive and take the said annuity or yearly rent-charge or
sum of £ unto the said (*grantee*) his executors admi-
nistrators and assigns henceforth during the natural life of
the said (*grantor*) (*a*) to be paid and payable to him the said
(*grantee*) his executors administrators and assigns at or in
the Common Dining-Hall of the Inner Temple in the county
of Middlesex by four equal quarterly payments between the
hours of &c. on the day of the day of the day
of and the day of in every year free from all taxes and
without any deduction or abatement whatsoever the first quarterly
payment to be made on the day of now next ensuing (*b*)
And in case the said (*grantee*) should die in the interval between

No. LXXIII.

*Grant of,
secured on
Freeholds.*

Of annuity to
be secured on
the freeholds.

Testatum.

Grant of an-
nuity.

Habendum.

(*a*) Or "of the said (*grantee*)," or "during the natural lives of the said (*nomi-
nees*) or during the life of the survivor of them," or "for and during the term of
99 years if the said (*grantor*) or if the said (*nominees*) or the survivor of them
should so long live."

(*b*) As to the necessity of this clause, see *ante*, Pref. sect. 3, and also APPOR-
TIONMENT.

No. LXXIII.

*Grant of,
secured on
Freeholds.*Covenant to
pay annuity.Clause of dis-
tress.

Clause of entry.

any of the said quarterly days of payment then also a proportionate (a) part of the said annuity for the time which at the decease of the said (*grantor*) shall have elapsed for the quarterly payment then growing due such proportionate part to be paid within days after the decease of the said (*grantor*) And the said (*grantor*) for himself his heirs executors and administrators doth hereby covenant promise and agree with and to the said (*grantee*) his executors administrators and assigns That he the said (*grantor*) his heirs executors or administrators shall and will well and truly pay or cause to be paid unto him the said (*grantee*) his executors administrators or assigns the said annuity or yearly rent-charge or sum of £ during the life of him the said (*grantor*) at or upon the days and in the manner hereinbefore appointed for the payment thereof *Provided always* and it is hereby declared and agreed by and between the said parties hereto and particularly the said (*grantor*) for himself his heirs and assigns doth hereby covenant promise and agree with and to the said (*grantee*) his executors administrators and assigns That in case the said annuity or yearly rent-charge or sum of £ shall happen to be due and unpaid for the space of 21 days next after any of the said days or times hereinbefore appointed for the payment thereof Then and in every such case and so often as it shall happen it shall and may be lawful to and for the said (*grantee*) his executors administrators and assigns into and upon the said messuages tenements lands hereditaments and premises so charged with the payment of the said annuity or into or upon any part thereof to enter and distrain for the same annuity and all arrears thereof and to dispose according to law of the distress and distresses then and there found to the intent that thereby the said annuity or yearly &c. of £ and all arrears thereof shall be fully paid and satisfied and all costs charges and expenses whatsoever sustained and occasioned by or attending such distresses shall be fully paid and satisfied *And further* That in case the said annuity or any part thereof shall be behind or unpaid for the space of 40 days next after any of the days or times hereinbefore appointed for the payment thereof [although no formal demand shall have been made thereof] Then and so often it shall and may be lawful to and for the said (*grantee*) his exe-

(a) Before the 4 & 5 Will. 4, c. 22, (see Dig. p. ii. tit. APPORTIONMENT) this clause was absolutely necessary where it was intended that the annuity should be apportioned.

cutors administrators and assigns into and upon the said premises or into or upon any part thereof in the name of the whole to enter and the same to have hold and enjoy and the rents and profits thereof and of every part thereof to receive and take to and for his and their own use and benefit until he or they shall be thereby and therewith or otherwise fully paid and satisfied the said annuity or so much thereof as shall accrue and grow due during such time as he the said (*grantee*) his executors administrators or assigns shall continue in possession of the said premises after such entry together with all costs damages and expenses occasioned by nonpayment thereof as aforesaid such possession to be without impeachment of waste other than wilful and malicious waste (*a*) *And this Indedture further witnesseth* That in further pursuance of the said agreement and for the further securing the payment of the said annuity or clear yearly sum of £ he the said (*grantor*) at the request and by the direction of the said (*grantee*) [testified by his sealing and delivering of these presents] *Doth* grant and demise unto the said (*T.*) his executors &c. *All those* the several messuages or tenements lands and hereditaments with the appurtenants hereinbefore mentioned and charged with the payment of the said annuity with all outhouses &c. *To have and to hold* the said messuages or tenements lands hereditaments and premises hereby granted and demised with the appurtenants unto the said (*T.*) his executors administrators and assigns from the day next before the day of the date of these presents for and during the term of 99 years thence next ensuing and fully to be completed and ended without impeachment of waste *Upon the trusts* nevertheless and to and for the ends intents and purposes hereinafter expressed and declared concerning the same that is to say *Upon trust* in the first place to permit and suffer the said (*grantor*) to receive and take the rents issues and profits of the said hereby demised premises with the appurtenants until default shall happen to be made of or in paying the said annuity or some part thereof on or at the days and times and in manner hereinbefore appointed for payment of the same *And upon this further trust* That in case the said annuity or yearly sum of £ or any part thereof shall happen to be behind or unpaid by the space of 40 day next after any of the said days or times of payment then and so often as the same shall happen the said (*T.*)

No. LXXXIII.

*Grant of,
secured on
Freeholds.*

Further testa-
tum.

Demise of lands
to trustee for 99
years.

Upon trusts.

To permit
grantor to take
the rents and
profits.

To raise arrears
by mortgage or
sale.

(a) If the grantor be tenant for life, add, "as far as the said (*grantor*) can grant that privilege."

No. LXXIII.

*Grant of,
secured on
Freeholds.*

his executors &c. do and shall by and out of the issues and profits of the said messuages premises or any part thereof or by demise leasing mortgaging or selling the same premises or any part thereof for all or any part of the said term of 99 years or by such other ways or means as the said (T.) his &c. shall seem meet raise and levy such sum or sums of money as shall be sufficient to pay and satisfy the said annuity or yearly &c. or so much thereof as from time to time shall happen to be in arrears and unpaid together with all such losses costs charges damages and expenses as the said (grantee) his executors &c. shall sustain or incur in consequence of the nonpayment of the same annuity as aforesaid or the said (T.) shall incur in the execution of the trust reposed in him And shall apply the monies arising thereby in or towards the payment or satisfaction thereof accordingly (a) And shall permit and suffer the said (grantor) his heirs and assigns to receive the surplus [if any] of the rents issues and profits of the said messuages hereditaments and premises as aforesaid to and for his and their own use and benefit And for the purpose of facilitating any such sale or mortgage it is hereby declared and agreed by the parties to these presents that all contracts sales mortgages assignments and things which shall be entered into made and executed by the said (T.) his executors &c. of or concerning the said messuages or tenements and premises or any part thereof shall to all intents and purposes be as valid and effectual in the law as the same would have been if the said (grantor) his executors &c. had actually joined in and executed the same *Provided always* and it is hereby further declared and agreed by and between the parties hereto That the said (T.) his executors administrators or assigns or any of them shall not be answerable for any loss which may happen to the said premises

Contracts &c.
of trustee good
without consent
of grantor.

Indemnity to
trustees.

(a) If it be so agreed, say, "And from and after and subject to the payments aforesaid Upon trust to lay out and invest the residue and surplus of the monies which shall arise and be produced by such sale or sales in the name or names of him the said (T.) his &c. in the purchase of a competent share or competent shares of the parliamentary stocks or funds of Great Britain or at interest upon government securities to be from time to time altered varied and transposed in for and upon such funds or securities of the same or like nature as often as the said (T.) his heirs &c. shall think fit, and to stand possessed of and interested in such stocks &c. upon the trusts following that is to say That the said (T.) his &c. shall during the life of the said (grantor) pay and satisfy unto the said (grantee) his executors &c. the said annuity or yearly &c. of &c. expressed to be hereby granted at the days and times and in manner hereinbefore appointed for payment thereof."

in the execution of the trusts hereinbefore expressed unless the same shall happen through his or their own wilful default *And* that the receipt or receipts of him the said (*T.*) his executors &c. for any monies payable to him or them by virtue of these presents shall be a sufficient discharge^(a) or discharges unto the person or persons paying the same and that the person or persons making such payments shall not be bound or liable to see to the application of such monies or be answerable or accountable for the loss misapplication or non-application thereof nor be obliged to inquire or ascertain whether such sales or mortgages shall be necessary for all or any of the purposes hereinbefore mentioned *Provided always* that it is hereby further declared and agreed That after the decease of the said (*grantor*) when the trusts hereinbefore declared concerning the said term of 99 years shall in all things be fully satisfied and performed or shall have become unnecessary or incapable of being performed Then and thenceforth the said term or so much thereof as shall not be disposed of under the trusts aforesaid shall cease determine and be absolutely void And the said (*grantor*) for himself his heirs executors administrators and assigns doth hereby covenant promise and agree with and to the said (*grantee*) his executors &c. in manner following that is to say That he the said (*grantor*) now at the time of the sealing and delivery of these presents hath in himself full power and absolute authority to charge all and singular the said messuages or tenements lands and hereditaments hereby charged and made chargeable with the payment of the said annuity or yearly sum of £ and also to demise the same with the appurtenants unto the said (*T.*) upon the trusts and to and for the intents and purposes aforesaid *And also* that the said premises now are and shall remain and be sufficient to such distress and entry as aforesaid *And* shall be holden and enjoyed as a security for the said annuity without any hinderance interruption claim or demand whatsoever from or by him the said (*grantor*) his executors administrators or assigns according to the true intent and meaning of these presents *And that* free and clear and freely and clearly acquitted exonerated and discharged by him the said (*grantor*) his executors and administrators of and from and against all and all manner of former estates rights charges and incumbrances whatsoever *And* further that he the said (*grantor*) his heirs executors and administrators and every

No. LXXIII.
Grant of,
secured on
Freeholds.

Receipts of
trustees to be
good dis-
charges.

Cesser of term.

Covenants.

Grantor has
power to charge
premises.

Premises suf-
ficient dis-
tresses.

Free from in-
cumbrances.

(a) As to the effect of this clause, see Pref. sect. 11.

No. LXXIII.

*Grant of,
secured on
Freeholds.*

And for further
assurance.

That grantor
will appear at
insurance office.

And not leave
the kingdom
without giving
notice.

other person having or lawfully or equitably claiming or who shall or may have or claim any estate right title trust and interest whatsoever either at law or in equity in to or out of the said hereditaments and premises hereby granted and demised and any part thereof shall and will from time to time and at all times hereafter during the continuance of this security upon every reasonable request of the said (*grantee*) his executors &c. but until such sale or mortgage shall be made at the costs and charges of the said (*grantor*) his heirs executors or administrators and after such sale or mortgage then at the costs and charges of the person or persons to whom the said premises shall be conveyed make do and execute all such further and other lawful and reasonable acts deeds matters and things whatsoever for the more effectually granting demising and assuring the said premises unto the said (*T.*) his executors &c. for and during the then remainder of the said term of 99 years Upon the trusts hereinbefore declared as by the said (*grantee*) his executors &c. or his counsel in the law shall be lawfully and reasonably advised or devised and required And moreover that the said (*grantor*) shall and will from time to time during the continuance of the said annuity at the request of the said (*grantee*) his executors &c. appear in person at office or any other office for life insurances within the cities of London and Westminster or send such notice in writing of his place of abode together with a certificate or certificates of the state of his health for the purpose of enabling the said (*grantee*) his executors &c. to insure or keep insured at the cost and charges of the said (*grantor*) his executors administrators or assigns any sum or sums of money not exceeding £ upon the life of him the said (*grantor*) And further that he the said (*grantor*) shall not nor will at any time hereafter during his life depart from or leave the kingdom or go or travel upon the seas or reside in foreign parts without giving every time sufficient notice in writing to the said (*grantee*) his executors &c. of his intention so to do in order to enable him the said (*grantee*) his executors &c. to make known the same if necessary at the said office so that the additional premium or premiums if any to be hereby incurred for the purpose of keeping on foot the said policy of insurance on the life of the said (*grantor*) may be paid And also that he the said (*grantor*) shall not nor will do any act or thing whatsoever whereby or by means whereof any policy or policies for effecting such insurance as aforesaid shall become void or voidable or otherwise prejudiced

or impeached *Provided always* and it is hereby declared and agreed by and between the parties hereto That the said warrant of attorney and the judgment to be entered up by virtue thereof are intended only as a collateral security for the payment of the said annuity or yearly &c. on or at the several days and in the manner hereinbefore appointed for payment thereof as aforesaid And that no execution or executions shall be issued or taken out upon the said judgment unless and until some payment of the said annuity shall be in arrear for the space of 21 days next after some or one of the said days hereinbefore appointed for payment thereof as aforesaid *Provided* nevertheless that when and so often as the said annuity shall be so in arrears then and in such case it shall be lawful for the said (*grantee*) his executors &c. to sue out such execution for recovering all or any part of the said annuity and all costs and charges which the said (*grantee*) his executors &c. shall bear pay sustain or be put unto by reason of the nonpayment of the same *And lastly* it is hereby declared and agreed by and between the parties to these presents and particularly the said (*grantee*) for himself his heirs executors and administrators doth hereby covenant promise and agree with and to the said (*grantor*) his heirs executors administrators and assigns That in case the said (*grantor*) his heirs &c. at any time after the expiration of years from the date hereof be desirous of (*a*) purchasing the said annuity or yearly rent-charge or sum of £ and of such his or their desire shall give unto the said (*grantee*) his executors administrators or assigns six calendar months notice in writing under his hand or in lieu of such notice shall pay one half year's payment of the same annuity Then and in such case from and immediately after the expiration of such notice or upon such payment in lieu thereof and upon payment by him the said (*grantor*) his executors &c. of the sum of £ for the repurchase of the same annuity together with all arrears and other sums which shall be then due for or in respect of the same he the said (*grantee*) his executors &c. shall and will at the request costs &c. of the said (*grantor*) his executors &c. assign release and surrender or otherwise dispose of the said annuity or yearly &c. and all the then subsisting securities for the same and also all and singular the hereditaments and premises hereby made chargeable with the payment thereof for the residue then

No. LXXIII.

*Grant of,
secured on
Freeholds.*

Warrant of attorney intended only as collateral security.

Power to repurchase.

The grantee will assign annuity &c.

(a) As to the necessity of this clause, see *ante*, Pref. sect. 10.

No. LXXIII. remaining and unexpired of the said term of 99 years or so much thereof as shall not have been disposed of under or by virtue of the trusts hereinbefore expressed and acknowledged or cause satisfaction to be acknowledged on record of the said judgment [if any] And also at the like request costs and charges of the said (*grantor*) his executors &c. assign unto the said (*grantor*) his executors &c. the benefit of any policy of insurance which may have been effected by the said (*grantor*) his executors &c. and which shall be then subsisting and in force or capable of being kept on foot or renewed in such manner and form as he the said (*grantor*) his executors &c. or his or their counsel in the law shall reasonably require *In witness &c.*

GRANTS OF ANNUITIES SECURED ON COPYHOLDS.

- | | | |
|----------------------------------|--|---|
| 1. <i>Grant by Surrender.</i> | | 3. <i>Estates of Surrenderor and Surrenderee until Admission.</i> |
| 2. <i>Estates pur autre Vie.</i> | | 4. <i>Warrant of Attorney a Security.</i> |

Grant by surrender.

SECT. 1. Where an annuity is to be secured on copyholds, it is usual either to covenant to make a surrender, or, which is the safer course, to make a previous surrender on condition, with a deed of grant, containing the usual covenants. A demise to a trustee is not commonly made, as no term can be granted without the licence of the lord for longer than one year.

Estates pur autre vie.

2. As the 29 Car. 2, c. 3, s. 12, and 14 Geo. 2, c. 20, s. 9, giving the benefit of estates *pur autre vie* to the executors of tenant for life, do not extend to copyholds, of which there can be no general occupant, *Withers v. Withers*, Amb. 151; *Zouch v. Forse*, 7 E. 186; the covenant to surrender ought to be limited to the use of the grantee for a term of years, to prevent the annuity determining on the grantor's death (see ANNUITY, sect. 2.)

Estate of surrenderor and surrenderee until admittance.

3. Where an actual surrender is made, the surrenderor remains tenant to the lord until admission, insomuch, that prior to the 55 Geo. 3, c. 192, now 7 Will. & 1 Vict. c. 26, the surrenderor could not, after such surrender, devise the copyholds without a previous surrender to his will, *Knebel v. Scrafton*, 8 Ves. 30; *Doe v. Wroot*, 5 E. 130; Coote, Morg. 111. So likewise a surrenderee, not being tenant until admittance, cannot in the meantime pass the lands, although he may make an equitable transfer of them, *Doe v. Tofield*,

11 E. 246; nor recover actual possession of the premises on default; but the surrenderor being considered in equity as trustee for the surrenderee, *Holdfast v. Clapham*, 1 T. R. 600, it is not usual for him to be admitted until default, in order to avoid the fees for admission and performance of the customary services.

4. Formerly a judgment would not attach upon copyholds, although it would bind the goods of the copyholder, and give priority, as in other cases, 2 Eq. Ca. Ab. 222. It is presumed that since the 3 & 4 Will. 4, c. 104, making copyholds assets for the payment of debts, the law is in this respect otherwise. A warrant of attorney may however in some cases be advisable as an additional security.

Secured on
Copyholds.

Warrant of at-
torney a secu-
rity.

No. LXXIV.

Grant of an Annuity for the Life of the Grantee secured on Copyholds.

No. LXXIV.

Secured on
Copyholds.

This Indenture &c. (as in the last precedent) Between (grantor) of &c. of the one part and (grantee) of &c. of the other part Whereas &c. (recite seisin of grantor, also contract for purchase of an annuity and warrant of attorney, as in the last precedent) (a) Now &c. in consideration of &c. to the said (grantor) in hand &c. by the said (grantee) at &c. paid the receipt whereof He the said (grantor) doth give and grant unto the said (grantee) and his assigns during the natural life of the said (grantee) One Annuity or &c. to be issuing out of &c. All those &c. To

Testatum.

(a) Where a surrender has been previously made, say, "And whereas at a special court-baron held in and for the manor of in the county of the said (grantor) hath surrendered by the rod into the hands of the lord of the said manor on the day of the date of these presents (or, if out of court, to two customary tenants, "by the hands and acceptance of (copyholders) two of the customary tenants of the said manor") according to the custom of the said manor All those &c. (parcels) To the end and intent that the said (grantee) his heirs or assigns shall or lawfully may be admitted tenant thereto to be holden at the will of the lord according to the custom of the manor subject to the rents and services in respect thereof on condition that if the said (grantor) his heirs executors or administrators shall well and truly pay or cause to be paid unto the said (grantee) his heirs or assigns for and during the natural life of the said (grantee) or his assigns one annuity or yearly sum of £ and also a proportional part of the said annuity free from taxes on the days and in the manner hereinafter particularly mentioned or if the said (grantor) his executors administrators or assigns should repurchase the said annuity upon the terms hereinafter mentioned Then and in either of the said cases the said surrender shall be void to all intents and purposes whatsoever."

Where sur-
render is pre-
viously made.

No. LXXIV. *Have and to Hold &c. And the said (grantor) for himself &c. covenant to pay &c. And (a) this Indenture further witnesseth*

*Secured on
Copyholds.*

*Habendum.
Further testa-
tum.*

That for the further &c. securing the payment of the said annuity &c. of £ at or upon the days &c. as aforesaid He the said (*grantor*) doth hereby for himself his heirs executors administrators and assigns covenant &c. with &c. (*grantee*) and his assigns that he the said (*grantor*) his heirs or assigns at or before the next general court which shall be holden in the said manor of shall and will surrender into the hands of the lord or lady of the said manor of according to the custom of the said manor *All those &c. with the appurtenants* hereinbefore mentioned *To the end and intent* that the said (*grantee*) or his assigns shall or lawfully may be admitted thereto to be holden at the will of the lord according to the custom of the said manor and subject to the rents and services in respect thereof *on condition* nevertheless that if the said (*grantor*) his heirs executors administrators or assigns shall well and truly pay the said annuity &c. unto &c. (*grantee*) and his assigns during the natural life of him the said (*grantee*) And also shall pay unto the executors administrators or assigns of the said (*grantee*) so much of the said annuity as shall be due at the decease of the said (*grantee*) or in case of a repurchase of the said annuity in pursuance of the proviso hereinafter contained in that behalf Then and in either such case the surrender hereinbefore covenanted to be made shall be and become absolutely void to all intents and purposes whatsoever *And* in case the said (*grantee*) or his assigns shall have been admitted to the said premises or any part thereof he and they shall thenceforth stand seised or possessed of the same *Upon* the trusts and to and for the ends intents and purposes and with under and subject to the powers provisoes declarations and agreements herein-after expressed and declared concerning the same that is to say *Upon Trust* that he the said (*grantee*) and his assigns shall and may by and out of the rents issues and profits thereof or any part thereof or by sale or mortgage thereof or by all or any one or more of the said ways and means at his discretion raise and

*Condition to
make void.*

*Declaration of
trusts.*

(a) Where a surrender has been previously made, omit this further testatum, and proceed, "And it is hereby declared and agreed That in case the said (*grantee*) or his assigns shall have been admitted to the said premises or any part thereof he and they shall then thenceforth stand seised and possessed of the same *Upon &c.*" as above.

levy such sum and sums as he or they shall deem sufficient to pay and satisfy so much of the said annuity &c. as shall be then due and in arrear together with all costs charges damages and expenses as shall have been sustained and expended *And upon this further Trust* to place out and invest the residue or surplus of the money to arise by such sale or mortgage and the produce of the said hereditaments and premises at interest in the name or names of the said (*grantee*) or his assigns *And* it is hereby declared and agreed by and between the parties to these presents That the said (*grantee*) his executors administrators or assigns shall stand possessed of and interested in the monies to be placed out and invested *Upon Trust* by and out of the interest dividends and proceeds thereof and in case the same shall be insufficient then by selling and disposing of the principal or capital of the said stocks funds or securities and therewith to retain and pay to himself the said (*grantee*) his executors administrators and assigns so much of the said annuity or yearly &c. as shall from time to time become due and payable together with all reasonable costs charges and expenses incurred in respect thereof *And* from and after full payment and satisfaction thereof then in trust to pay and apply the residue and surplus of the dividends and interest thereof or of so much of the principal as shall not have been applied for the purposes aforesaid unto the said (*grantor*) his executors administrators and assigns *Provided always* and it is hereby declared &c. that from and after the decease of the said (*grantee*) and full payment unto the executors administrators or assigns of the said (*grantee*) of the said annuity and such proportional part as aforesaid and all costs charges damages and expenses as aforesaid then the said several pieces and parcels of land and hereditaments hereby covenanted to be surrendered or so much thereof as shall not be disposed of under the trusts hereinbefore declared shall be *In Trust* for the said (*grantor*) his heirs and assigns to be surrendered or otherwise assured as he or they shall direct or appoint *And further* that all contracts sales &c. *And also* that the said (*grantee*) his executors administrators and assigns or one of them shall not be answerable &c. *And* that the receipt or receipts &c. *And* the said (*grantor*) doth hereby for himself &c. (*Covenants for title &c.*) *Provided always* (*Clause for repurchase &c.*) (See last precedent.)

No. LXXIV.

 Secured on
Copyholds.

After decease
of grantee and
payment of an-
nuity, that the
premises shall
be held in trust
for the grantor.

No. LXXV.

*Secured on
Leaseholds by
Husband and
Wife.*

No. LXXV.

*Annuity or Rent Charge out of Leasehold Premises, secured by
Husband and Wife.*

Recital of set-
tlement.

This Indenture made &c. Between (Husband) and A. his wife formerly (maiden name) spinster of the first part (Trustees) of the second part and (Grantee) of &c. of the third part Whereas in pursuance of articles of settlement made on the marriage then intended and which afterwards took effect between the said (H.) and A. his said wife bearing date &c. and made between the said parties therein mentioned the messuage or tenement or dwelling-house hereinafter described now stands limited to and vested in the said (T.) in such manner and form that the said A. may with the consent of her said husband dispose of the same at pleasure in the event of her decease without leaving issue of the said intended marriage and in the meantime receive the rents issues and profits thereof to the sole use of herself or her assigns independently of her said husband And whereas there has not yet been nor is there any probability of there being in future any

Recital of lease.

issue of the said marriage And whereas by indenture of lease of three parts dated &c. between the said (T.) of the first part the said (H.) and A. his wife of the second part and (lessee) of the third part It was witnessed that they the said (T.) did at the request direction and appointment of them the said (H.) and A. his wife testified &c. demise lease and to farm let, and the said (H.) and A. his wife did demise lease ratify and confirm unto the said (lessee) his executors administrators and assigns All that &c. To Hold from the 25th September last past for the term of thence next ensuing at the yearly rent of payable quarterly on the days therein mentioned unto the said (T.) their executors &c. And whereas the said (H.) and A. his wife having occasion for the sum of £ have requested the said (grantee) to advance them the same which he has agreed to do upon having an annual sum of £ secured to him in lieu thereof out of the rent reserved by the said in part recited indenture of lease and the premises thereby demised during the now residue of years at the times and in manner hereinafter expressed Now this Indenture witnesseth That in consideration of £ paid by the said (grantee) to (H.) and A. his wife the receipt whereof they do hereby acknowledge and declare that the same is in full for the absolute purchase of the said sum or yearly rent-charge

Testatum.

of £ and of and from the said sum of £ and every part thereof do and each of them doth acquit &c. they the said (H.) and A. his wife and the said (T.) do and each of them doth give &c. sell and confirm unto the said (*grantee*) his executors &c. one clear annual sum or yearly rent of £ to be yearly issuing out of and charged and chargeable upon *all that* &c. demised by the before in part recited indenture of lease and also out of and from the rent thereby reserved *To Have* hold perceive receive take and enjoy the said annual sum or yearly rent of £ unto the said (*grantee*) his executors &c. from the day of the date hereof for and during all the rest and residue thence to come and unexpired of the said term of years in or by the said indenture of lease granted as aforesaid to be paid to the said (*grantee*) his executors &c. at the Royal Exchange in the city of London by four equal quarterly payments that is on &c. in each and every year between the hours of ten and eleven of the clock in the forenoon without any deduction or abatement whatsoever in respect of any taxes &c. the first payment to be made on &c. And the said (H.) and A. his wife do and each of them doth hereby expressly direct and appoint and require the said (T.) or the trustees for the time being of the said demised premises to pay and satisfy the yearly sum accruing by and out of the rents and profits thereof *Provided always* that if default be made in the payment &c. the said (*grantee*) his executors &c. shall have full and free liberty to enter into and distrain upon the said messuage &c. hereby charged with the payment thereof in like manner as for rent reserved on common leases to the intent to pay and satisfy himself and themselves the annual sum of £ or the part thereof so in arrear and all costs &c. attending the nonpayment or recovery of the same *And also* that in case the said annual sum of £ or any part thereof be at any time unpaid for the space of fifteen days next after any of the days &c. then and so often it shall be lawful for the said (*grantee*) his executors to enter into and upon all and singular or any part of the said messuage and to have hold and enjoy the same and to receive and take the rents issues and profits thereof to his and their own proper use until he or they shall thereby or otherwise be fully paid and satisfied the said clear net annual sum or yearly rent of £ and all arrears thereof due at the time of such entry or afterwards during the continuance of such possession Together with all costs damages and expenses sustained or occasioned by reason of the nonpayment or recovery

No. LXXV.

*Secured on
Leaseholds by
Husband and
Wife.*

Habendum.

Appointment.

Clause of dis-
tress.

Clause of entry.

No. LXXV.

*Secured on
Leaseholds by
Husband and
Wife.*

Receipts suffi-
cient discharges.
Covenants from
husband and
wife.

thereof *And* it is hereby declared and agreed that the receipts of the said (*grantee*) shall be discharges for the sums expressed therein (*Covenant from husband and wife that they or the trustees would pay the said sum of £ without deduction*) *And further* that the said messuage demised by the said indenture of lease shall remain and be charged with the said annual sum or yearly rent of £ and also the powers and remedies hereby created for securing and enforcing payment thereof during all the now residue of the said term of years and that the same messuage &c. shall be holden and enjoyed subject thereto (*Covenant for husband and wife to insure the premises, see ante, No. XLVIII.*)

In witness &c.

No. LXXVI.

No. LXXVI.

*Secured on
Leaseholds.*

Assignment of a Leasehold Estate as a Collateral Security for the Payment of an Annuity for Lives.

Recital of lease.

This Indenture &c. Between (*grantor*) of &c. of the first part (*grantee*) of &c. of the second part and (*trustee*) of &c. a trustee named by and on behalf of the said (*grantee*) of the third part *Whereas* by indenture bearing date &c. and made between (*original lessor*) therein described of the one part and (*lessee*) also therein described of the other part For the considerations therein mentioned the said (*lessor*) did demise unto the said (*lessee*) his executors administrators and assigns All that piece or parcel of ground &c. *To hold* the same with the appurtenants unto the said (*lessee*) his executors administrators and assigns from the day of then last past during the term of years thence next ensuing under the clear yearly rent of £ payable quarterly on the days therein mentioned *And* subject to the several covenants agreements and provisoes therein contained *And whereas* by divers mesne assignments and other acts in the law particularly by indenture of assignment bearing date on or about the day of and made between (*assignor*) therein described of the one part and the said (*grantor*) of the other part the said piece or parcel of ground messuage buildings and other the premises comprised in the said recited indenture were assigned to or became vested in the said (*grantor*) *And whereas* the said (*grantor*) in consideration of the sum of £ to be to him paid by the said (*grantee*) hath agreed to grant unto him

Mesne assign-
ments.

Contract for
purchase.

the said (*grantee*) his executors administrators and assigns one annuity &c. during the natural lives of (*nominees*) and the life of the survivor of them And for better securing the payment of the said annuity to the said (*grantee*) he the said (*grantor*) by his bond &c. bearing even date herewith and executed immediately before these presents is and stands bound to the said (*grantee*) his executors administrators and assigns in the penal sum of £ with a condition thereunder written that if the said (*grantor*) his executors administrators or assigns should and did well and truly pay unto the said (*grantee*) his executors &c. during the lives of the said (*N.*) and the life of the longest liver of them the annuity or &c. of £ clear of all taxes charges and deductions whatsoever on the days and in manner therein and hereinafter mentioned then the said bond to be void *And whereas* previous to the granting of the said annuity he the said (*grantor*) agreed to assign the messuage tenements and premises so assigned to and vested in him as aforesaid as further security for payment of the same annuity in such manner as is for that purpose &c. mentioned and expressed *Now* &c. in pursuance and performance of the said agreement and in consideration of &c. to the said (*grantor*) in &c. paid by the said (*grantee*) at &c. in full for the absolute purchase of the said annuity so granted and payable to him the said (*grantee*) by the said bond as aforesaid the receipt &c. and for &c. payment &c. unto &c. (*grantee*) his &c. during the lives &c. *He* the said (*grantor*) *Doth* demise unto the said (*grantee*) his executors administrators and assigns *All that* &c. comprised in and demised by the said indenture of lease as hereinbefore is mentioned with their rights easements and appurtenants *To Have and to Hold* the said messuage &c. unto the said (*grantee*) his executors &c. for the residue of the said term of years except the last three days of the said term *Upon the trusts* nevertheless and to and for the ends intents and purposes hereinafter expressed and declared that is to say In the first place for the better securing the payment of the said annuity or &c. of £ according to the true intent and meaning of the said in part recited bond and of these presents That in case the said annuity shall be unpaid at any day of payment it shall be lawful for the said (*grantee*) his executors &c. during the lives &c. out of the rents issues and profits of the said hereby demised messuage &c. or by mortgage of the said messuage &c. or otherwise to raise so much money as shall be sufficient to pay and discharge all arrears of the said annuity and

No. LXXVI.

Secured on
Leaseholds.

Bond.

Agreement to
assign lease.

Habendum.

Declaration of
trusts.

No. LXXVI.
*Secured on
 Leasholds.*

Proviso for
 avoidance of
 assignment &c.
 upon payment
 of annuity.

Covenants.

also all costs damages charges and expenses to be from time to time occasioned by such non-payment thereof And the said (*grantor*) doth hereby direct the present and all future tenants of the said hereby demised premises to pay to the said (*grantee*) his executors &c. during the lives &c. so much of their respective rents of the said premises when the same shall become payable as shall be sufficient to pay and satisfy to him and them the said annuity or &c. of £ together with all costs and charges which shall or may happen by reason of the non-payment thereof in manner aforesaid and that the receipts of him the said (*grantee*) shall be as good and sufficient discharges to the said tenants as if the same had been actually paid to him the said (*grantor*) his executors &c. *Provided always* and it is hereby declared and agreed by and between the said parties hereto That if the said (*grantor*) his executors administrators or assigns or any of them shall and do well and truly pay or cause to be paid unto him the said (*grantee*) his &c. during the lives &c. and the life of &c. the said annuity or &c. on the &c. and also upon the death of the survivor of them the said (*nominees*) all arrears of the said annuity up to the day of the death of the said survivor &c. that then the agreement hereby made and every article and thing herein contained shall from henceforth cease determine and be utterly void and of no effect And the said (*grantor*) for himself &c. doth covenant &c. in manner following &c. That he shall &c. [pay annuity &c. see GRANT OF ANNUITY (FREEHOLDS)] And also shall and will pay the rent of £ so reserved and payable for the said messuage &c. and premises as aforesaid as also all other taxes and duties touching the same and shall save harmless and keep indemnified the said (*grantee*) his executors &c. of and from the same *And further* That the said (*grantor*) his &c. at his and their own proper costs and charges shall and will from time to time and at all times during the lives of &c. and the life of &c. insure and keep insured the said hereby demised premises &c. And in case the said premises shall happen to be destroyed by fire or otherwise that then the said (*grantor*) his executors administrators or assigns shall and will forthwith lay out all such monies insured or to be insured on the said premises in the rebuilding and making good all the damages so happening as aforesaid *And further* That the said indenture of lease of the day of is now a good valid and effectual lease of said hereditaments and premises hereinbefore expressed to be demised and is in full force unforfeited and unsurrendered

and in no wise become void or voidable And that all and singular the rents covenants conditions and agreements in and by the said indenture of lease reserved and contained and on the part of the lessee his executors administrators and assigns to be paid observed and performed have been paid observed and performed up to the date of these presents And also that he the said (*grantor*) now hath good right and full power to demise the said hereditaments and premises hereinbefore expressed to be demised for the term and in manner aforesaid And also that if default shall be made in payment of the said annuity or any part thereof it shall be lawful for the said (*grantee*) his executors administrators and assigns to enter into or upon the said hereditaments and premises or any part thereof and the same thenceforth during the same term quietly to hold occupy and enjoy and receive and take the rents and profits thereof without any lawful interruption or disturbance from or by the said (*grantor*) his executors administrators or assigns or any other person And that free and discharged or otherwise by the said (*grantor*) his executors or administrators sufficiently indemnified from and against all estates incumbrances claims and demands whatsoever And moreover that he the said (*grantor*) his executors and administrators and every other person having or lawfully or equitably claiming any estate right title or interest property claim or demand of in or to the said hereditaments and premises or any part thereof shall and will from time to time and at all times during the said term for which the said hereditaments and premises are hereinbefore expressed to be demised upon the request of the said (*grantee*) his executors administrators or assigns but at the costs of the (*grantor*) his executors or administrators do and execute every such lawful act thing and assurance for the further or more perfectly assuring the said hereditaments and premises and every part thereof unto the said (*grantee*) his executors administrators or assigns as by the said (*grantee*) his executors administrators or assigns shall be reasonably required And that he the said (*grantor*) his executors administrators or assigns shall and will from time to time and at all times so long as the said annuity or any part thereof shall be payable pay observe and perform or cause to be paid observed and performed all and singular the rents covenants conditions and agreements in and by the said indenture of lease reserved and contained and on the part of the lessee his executors administrators or assigns to be paid observed and performed and keep the said (*grantee*) his executors administrators and assigns

No. LXXVI.

 Secured on
Leaseholds.

No. LXXVI. indemnified against all actions suits proceedings costs charges
Secured on damages claims and demands whatsoever if any which shall or
Leaseholds. may be incurred or sustained by reason or on account of the non-
 payment non-observance or non-performance of the same rents
 covenants conditions or agreements or any of them *In witness*
&c.



No. LXXVII.

Secured on
Money in the
Funds.

No. LXXVII.

Grant of an Annuity secured on Money in the Funds.

Obs. By the the 53 Geo. 3, c. 141, s. 10, if the stock be not
 actually transferred for the purpose of securing the annuity, but be
 standing in the names of trustees under a marriage settlement, or a
 will and the like, an enrolment of the memorial will not be required.

This Indenture made &c. Between (*grantor*) of &c. of the one
 part and (*grantee*) of &c. of the other part *Whereas* (a) A. B. by
 his last will and testament duly executed and attested bearing
 date &c. did among other things devise and bequeath unto
 (*trustees*) their executors administrators and assigns certain
 Recital of will. estates therein particularly described *Upon trust* That they the
 said (*trustees*) should as soon as convenient after his decease sell
 and dispose of the same for the best price that could be obtained
 and he did direct that the money to arise from the sale of such
 estates should be laid out and invested in some one or more of
 the public funds and that the annual interest dividends and
 produce should from time to time accumulate until the said
 (*grantor*) his grandson should attain the age of twenty-one *And*
then the said (*trustees*) should pay unto the said (*grantor*) his
 grandson the whole interest dividends and income of the said

(a) If the estate be created by a settlement, then, instead of the above recitals,
 say, " *Whereas* in and by a certain indenture bearing date &c. and made between
 &c. purporting to be a settlement made on the marriage then intended and which
 afterwards took effect the sum of £ Three per cent. Bank Annuities of
 (*grantor*) and C. D. his now wife was transferred into the names of the said
 (*trustees*) in the books of the Governor and Company of the Bank of England
Upon trust that they the said (*trustees*) and the survivors and survivor of them
 and the executors &c. of such survivor should pay and apply the interest divi-
 dends and proceeds thereof as the same should from time to time become due
 and payable from and after the said marriage unto the said (*grantor*) and his
 assigns during the term of his natural life or otherwise permit and empower him
 to receive the same to and for his and their benefit *And* from and immediately
 after his decease *Upon trust* to pay and apply the same in the manner therein
 expressed."

estates and all the increments accumulations and improvements thereof during the natural life of the said (*grantor*) to and for his own use and benefit *And whereas* the said (*testator*) departed this life on or about the day of in the year 18 without revoking or altering the said bequest to him the said (*grantor*) and the said (*trustees*) duly proved his said will in the

No. LXXVII.

*Secured on
Money in the
Funds.*

Death of tes-
tator and pro-
bate of will.

Court &c. *And whereas* the said (*grantor*) attained his age of twenty-one years on or about &c. and thereupon became entitled to the interest dividends and produce of the said estate of the said (*testator*) *And whereas (recite contract for purchase, see ante, No. LXXVI.) And whereas* upon the treaty for the purchase of the said annuity or &c. of £ it was agreed that for the more effectually securing the payment thereof unto the said (*grantee*) his executors administrators or assigns he the said (*grantor*) should grant and assign unto the said (*grantee*) all the present and future interest dividends and produce so given and devised to the said (*grantor*) during the term of his natural life *Now &c. (see ante, No. LXXIII.) And this Indenture further*

Grant of an-
nuity.

witnesseth That in consideration of the premises *He* the said (*grantor*) *Doth* grant &c. unto the said (*grantee*) and his assigns *All* and every the interests dividends and produce now accruing and arising and from time to time to accrue and arise during the natural life of the said (*grantor*) of and from the said estate of the said (*testator*) *To Have and to Hold* receive perceive take and enjoy the said interest dividends and profits and all advantage and benefit therefrom unto the said (*grantee*) his executors administrators and assigns *Upon* the trusts nevertheless and under and subject to the provisoes declarations and agreements herein-after expressed and declared of and concerning the same that is to say *Upon Trust* that he the said (*grantee*) his executors administrators and assigns shall and do by with and out of the interest dividends and produce hereby assigned or intended so to be yearly and every year during the life of the said (*grantor*) pay the said annuity or clear yearly sum of £ and a proportional part thereof as aforesaid at or on the days or times and in the manner hereinbefore appointed for payment of the same *And* in the next place shall and do pay and reimburse himself all costs charges and expenses which the said (*grantee*) his executors administrators or assigns shall sustain or be put unto by reason or means of the nonpayment of the same or any part thereof *And* *lastly* shall and do pay the residue of the said interest dividends and produce to the said (*grantor*) his executors administrators

Grant of inte-
rest and divi-
dends,

upon trusts,

to pay annuity,

residue to the
grantor.

No. LXXVII.
*Secured on
 Money in the
 Funds.*

Covenant that
 grantor is enti-
 tled to the inte-
 rest and divi-
 dends;

to appear at
 an insurance
 office.

Repurchase.

or assigns for his and their own use and benefit *And* the said (*grantor*) for himself &c. doth covenant &c. that is to say That he the said (*grantor*) now at the time of making and sealing these presents is in the receipt and enjoyment of and well entitled to the said interest dividends and produce and that he hath not at any time or times heretofore made done or committed any act deed grant assignment matter or thing whatsoever whereby or wherewith the said dividends and produce hereby assigned or intended so to be is are can shall or may be in anywise charged incumbered or otherwise prejudicially affected *And* that he the said (*grantor*) shall and will &c. [appear at an insurance office See GRANT OF ANNUITY (FREEHOLDS.)] *Provided always* and it is hereby declared and agreed by and between the parties to these presents and particularly the said (*grantee*) for himself &c. [*proviso for repurchase*. See *ante*, No. LXXIII.] *In witness* &c.

ASSIGNMENTS OF ANNUITIES.

1. *An Annuity is assignable.*
2. *Need not be inrolled.*

3. *Stamp.*

An annuity is
 assignable.

SECT. 1. It was formerly doubted whether an annuity was assignable though assigns were named in the grant (Perk. s. 101), it being considered a mere personal contract, and consequently a *chose in action*, 2 Vin. Abr. 515; but this objection was afterwards overruled, Hetl. 80. It seems, too, that naming the assigns is not essential to the making an annuity assignable, 7 Co. 28 b; Harg. Co. Litt. 144 b. An annuity, however, being in the nature of a *chose in action*, a power of attorney is usually given to sue in the name of the assignor for recovery of the arrears.

Need not be in-
 rolled.

2. The memorial of an annuity being once inrolled, need not on assignment to be inrolled again, *Dixon v. Birch*, 2 H. Bl. 307.

Stamp.

3. An assignment of an annuity requires an *ad valorem* stamp on the consideration money.

No. LXXVIII.
Assignment.

No. LXXVIII.

Assignment of an Annuity.

This Indenture &c. Between (*assignor*) of &c. of the first part (*trustee of term*) of &c. of the second part (*assignee*) of &c. of

the third part and (*new trustee of term*) of &c. of the fourth part No. LXXXVIII.
Whereas by an indenture bearing date &c. and made between Assignment.
(*grantor*) therein described of the first part (*trustee of the term*)
also therein described of the second part and said (*assignor*) of Recital of grant
the third part for the considerations therein mentioned the said of annuity.
(*grantor*) did give grant and confirm unto the said (*assignor*) one
annuity or clear yearly sum of £ free from all deductions
whatsoever to be charged and chargeable upon and issuing out
of all those the messuages lands tenements and hereditaments &c.
To Hold the said annuity and every part thereof unto the said
(*assignor*) his executors administrators and assigns thenceforth
for and during the natural life of the said (*grantor*) and a pro-
portional part thereof to be paid on or at the days and times and
in the manner in the now reciting indenture mentioned for pay-
ment of the same with the usual powers of distress and entry for
recovering and enforcing payment thereof *And* by the said in-
denture now in recital the said (*grantor*) on the nomination and
by the direction and appointment of the said (*assignor*) did grant
unto the said (*old trustee*) his executors administrators and assigns
All those &c. hereinbefore described and by the now reciting in-
denture charged with the said annuity of £ and every part
thereof with the appurtenants *To Hold* the same unto the said (*T.*)
his executors administrators and assigns from the day next before
the day of the date of the now reciting indenture for and during
and unto the full end and term of years thence next ensuing
and fully to be complete and ended if the said (*grantor*) should
so long live *Upon* the trusts therein expressed and declared of
and concerning the same *And* by the now reciting indenture it
was also agreed that the said (*grantor*) should be at liberty at
any time thereafter to repurchase the said annuity at the price
and on the terms therein mentioned *And whereas* the payment Warrant of
of the said annuity was further secured by a judgment confessed attorney.
in her Majesty's Court of Queen's Bench at Westminster by
virtue of a warrant of attorney from the (*grantor*) for that
purpose *Whereas* the said (*assignor*) did effect an insurance Insurance.
with the office of on the life of the said (*grantor*)
for the sum of £ to be paid to the said (*assignor*) or his
executors on the decease of the said (*grantor*) in consideration
of the annual premium of £ *And whereas* the said (*as-*
signee) hath contracted and agreed with the said (*assignor*)
for the absolute purchase of the said annuity or yearly sum of
£ *Now this Indenture witnesseth* That in pursuance of the Testatum.
said agreement and in consideration of the sum of £ of

No. LXXVIII. &c. to the said (*assignor*) paid by &c. the receipt whereof &c. He the said (*assignor*) *Hath* bargained sold assigned transferred &c. and by &c. doth bargain &c. unto the said (*assignee*) his executors administrators and assigns *All that* the said annuity of £ in and by the said in part recited indenture granted secured and made payable unto the said (*assignor*) his executors administrators and assigns as hereinbefore mentioned and all arrears thereof and all and every sum and sums of money to become due and payable for and on account of the said annuity &c. And all the right title interest trust property possession claim and demand whatsoever both at law and in equity of him the said (*assignor*) of in to or out of the same annuity and premises and every part thereof Together with all remedies and powers in and by the said in part recited indenture given for recovering and receiving the same *And also* the judgment entered upon the said warrant of attorney *And also* the said policy of insurance and all and every sum and sums of money secured or recoverable thereon *To Have and to Hold* receive and enjoy the same annuity &c. and all arrears and growing payments thereof Together with the said powers and remedies and means for enforcing the same and the said judgment and policy of insurance and all and singular other the premises hereby assigned unto the said (*assignee*) his executors administrators and assigns from the day of now last past during the natural life of the said (*grantor*) as fully absolutely and beneficially to all intents and purposes whatsoever as he the said (*assignor*) might have held and enjoyed them if these presents had not been made *And it is* &c. (Power of Attorney, see *last Precedents*) *And this Indenture further witnesseth* That for the considerations aforesaid and also in consideration of &c. to the said (*assignor's trustee*) in &c. paid by the said (*assignee's trustee*) &c. *He* the (*assignor's T.*) by the direction of the said (*assignor*) and at the request and nomination of the said (*assignee*) testified by their severally being parties to and executing these presents *Hath* bargained sold &c. and by &c. And the said (*assignor*) at the like request and appointment of the said (*assignee*) *Hath* ratified and confirmed and by these presents *Doth* &c. unto the said (*assignee's T.*) his executors administrators and assigns *All those* the said messuages and tenements lands and hereditaments &c. in and by the said in part recited indenture demised unto the said (*assignor's T.*) his executors &c. And all the estate right title interest term and terms of years &c. claim and demand whatsoever &c. of him the said (*assignor's T.*) and (*assignor*) or

Assignment.

Habendum.

Further testament.

Assignment by one trustee to another.

either of them of in to or out of the same *To have &c.* the messuages and tenements lands hereditaments and all and singular other the premises hereby assigned or otherwise assured or intended so to be and every part thereof with the appurtenants unto the said (*assignor's T.*) his executors administrators and assigns henceforth for and during all the residue and remainder of the said term of years now to come and unexpired *Upon* the trusts nevertheless and to and for the ends intents and purposes in or by the said indenture declared or expressed concerning the same and in such manner that all the benefit and advantage of the same trusts in favour of the said (*assignor*) his executors administrators and assigns shall henceforth belong to and be received and enjoyed by the said (*assignee*) his executors administrators and assigns according to the true intent and meaning of these presents (*a*) *And* the said (*assignor's T.*) for himself his executors administrators and assigns doth hereby covenant and declare to and with the said (*assignee's T.*) his executors administrators and assigns by these presents That he the said (*assignor's T.*) hath not at any time heretofore made done executed committed or knowingly or wilfully suffered any act matter or thing whatsoever whereby or by reason or means whereof the said messuages and tenements lands and hereditaments hereby assigned or otherwise assured or intended so to be or the term of years therein or any part thereof are is can shall or may be impeached charged incumbered or prejudicially affected in any way whatsoever *And* the said (*assignor*) for himself his heirs executors and administrators doth covenant promise and agree with and to the said

No. LXXXVIII.
Assignment.

Declaration of trusts.

Covenant by the old trustee that he hath done no act to incumber.

Covenants from assignor.

(*a*) If, instead of assigning the term to a new trustee, the old trustee be continued, omit the further testatum, and say, "*And* it is hereby declared and agreed by and between the parties to these presents and particularly the said (*T.*) at the request and instance of the said (*assignor*) doth hereby for himself his heirs executors administrators and assigns covenant and agree with and to the said (*assignee*) his executors administrators and assigns That he the said (*T.*) his executors administrators and assigns shall and will from time to time and at all times hereafter during the continuance of the said term of years stand possessed of and be interested in the said messuages and tenements lands and hereditaments subject as aforesaid *Upon the trusts* and to and for the ends intents and purposes expressed and declared of and concerning the same nevertheless so and in such manner that all benefit and advantage of the same trusts in favour of the said (*assignor*) his executors administrators and assigns shall henceforth belong to and be received and enjoyed by the said (*assignee*) his executors administrators and assigns *And* the said (*T.*) doth hereby &c." (*covenant that he has done no act to incumber, as above.*)

No. LXXVIII. *(assignee)* his executors administrators and assigns That for and
Assignment. notwithstanding any act deed matter or thing by him the said
(assignor) made done committed or knowingly suffered to the
 contrary the said annuity &c. of £ is now subsisting and
 unredeemed and good and valid both in equity and at law and
 also the several securities given for the same are now in force
And that he the said *(assignor)* hath at the time of executing
 these presents good right and full power and authority to bargain
 sell and assign the said annuity and other the premises hereby
 assigned or otherwise assured or intended so to be in manner
 aforesaid *And further* that he the said *(assignor)* hath not at
 any time heretofore done or knowingly or willingly suffered nor
 shall nor will make do or suffer any act deed matter or thing
 whatsoever whereby or by reason whereof the said annuity or
 any part thereof or any of the premises hereby assigned or other-
 wise assured or intended so to be are is can or may be impeached
 charged incumbered or in anywise prejudicially affected or the
 said warrant of attorney and policy of insurance or either of them
 are is can or may be in any way assigned satisfied released vac-
 ated or extinguished in consequence of which the said *(assignee)*
 shall may or can be prevented or hindered from receiving or
 taking the said annuity or &c. of £ or any part thereof as
 and when the same from time to time shall become due and
 payable *And* that he the said *(assignor)* his executors administra-
 tors and assigns shall and will from time to time at the reasonable
 request and at the costs and charges of the said *(assignee)* his
 exeutors &c. make do and execute all and every such further and
 other lawful and reasonable acts deeds assignments and assur-
 ances in the law whatsoever for the further better more perfectly
 and absolutely assigning and assuring the said annuity or &c. of
 £ in such manner and form as by the said *(assignee)* his
 executors &c. or his or their counsel in the law shall be reason-
 ably advised devised or required provided that the person or
 persons required to make the same shall not be compelled or
 compellable to go or travel from his or their respective places of
 abode for the doing thereof *In witness &c.*

Annuity sub-
 sisting, good
 right to assign.

No act to in-
 cumber.

Further assu-
 rance.

MEMORIALS OF ANNUITY DEEDS.

- | | |
|--|---|
| <p>1. <i>Memorial of Deed to be inrolled.</i>
 2. <i>Requisites of the Memorial.</i>
 <i>First, as to the Date.</i>
 <i>Secondly, as to the Instrument.</i>
 <i>Thirdly, as to the Estate on which the Annuity is charged.</i></p> | <p><i>Fourthly, as to the Name.</i>
 <i>Fifthly, as to the Names of the Witnesses.</i>
 <i>Sixthly, as to the Consideration.</i>
 <i>Seventhly, when void.</i>
 3. <i>Stamp Duty on the Memorial.</i></p> |
|--|---|

SECT. 1. By the 53 Geo. 3, c. 141, ss. 2, 3, which repealed the 17 Geo. 3, a memorial of every deed, bond, instrument or other assurance, whereby any annuity or rent-charge shall be granted for one or more life or lives, within thirty days, shall be inrolled in Chancery. Such memorial to contain the date of the deed, the names of all the parties, and of all the witnesses, and to set forth the annual sum to be paid, the name of the person for whose life the annuity is granted, as also the name of the person or persons by whom the annuity is to be beneficially received, otherwise every such deed and assurance shall be void, the pecuniary consideration for granting the same, and the annual sum or sums to be paid, in the form or to the effect following.

Date of Instrument.	Nature of Instrument.	Names of Parties.	Names of Witnesses.	Name or Names of Person or Persons by whom Annuity or Rent-charge to be beneficially received.	Person or Persons for whose Life or Lives Annuity or rent-charge is granted.	Consideration, and how paid.	Amount of Annuity or Rent-charge.
9 & 10 Aug. 18 .	Indenture of Release.	A. B. of one part, C. D. of the other, part.	E. F. of G. H. of	C. D.	A. B.	100 <i>l.</i> paid in money, and 500 <i>l.</i> paid in notes of the Governor and Company of the Bank of England (or other notes, or bills of exchange, as the case may be).	100 <i>l.</i> a-year.
Same Date.	Bond in Penalty of £ .	A. B. to C. D.	E. F. G. H.				
Same Date.	Warrant of Attorney to confess judgment on the same bond.	A. B. to I. K. and L. M. Attornies of the Court of Queen's Bench.	E. F. G. H.	} For securing the same annuity or Rent-charge.			

The 3 Geo. 4, c. 92, and 7 Geo. 4, c. 75, serve to explain some doubtful points in the 53 Geo. 3.

*Memorial.*Requisites of
the memorial.

2. In the construction of these acts as to the requisites of the memorial, it has been held—

First, *as to the date*, That the memorial of every instrument, by which an annuity is secured, must contain the date of each instrument, 2 H. Bl. 13; but where an indenture is described, “as bearing even date with a bond,” the date of which is set forth, it is sufficient, *Mason v. Phillips*, 5 M. & S. 369.

Secondly, *as to the instrument*. A bond given as a collateral security must be memorialized, *Rosher v. Hurdis*, 5 T. R. 678; and if it be joint and several, it is not sufficient to describe it as several only, *Willey v. Canthorne*, 1 East, 398. Also the warrant of attorney to secure an annuity must be included in the memorial, *Hopkins v. Waller*, 4 T. R. 463.

Thirdly, *as to the estate on which the annuity is charged*. The nature of the estate and the interest the grantor has in it, must be specified in the memorial, *Bradford v. Burland*, 14 E. 446. So where there are trusts which are created in consequence of the annuity, they must be stated, not in general terms, *Taylor v. Johnson*, 8 T. R. 184; nor by the words “Upon the trusts therein mentioned,” *Dolman v. Dolman*, 5 T. R. 641. But the clause for redemption, which was held to be necessary under the 17 Geo. 3, is not required by the 53 Geo. 3, c. 141; *Yems v. Smith*, 3 B. & A. 206.

Fourthly, *as to the names of the parties*. The name of the person actually paying the consideration money must be given, when it is paid on account of another, *Dalmer v. Barnard*, 7 T. R. 248.

Fifthly, *as to the names of the witnesses*. The description of the witnesses was required under the two first acts to be accurately set forth, *Darwin v. Lincoln*, 5 B. & A. 444; but the 3 Geo. 4, c. 92, declares, that no further description of the witnesses is necessary than the naming them, *St. John v. Champneys*, 1 Bing. 77. And by the 7 Geo. 4, c. 75, it is provided, that no further or other names of witnesses are required in the memorial besides the names of such witnesses as shall appear signed to their respective attestations of the execution of the other instruments.

Sixthly, *as to the consideration*. An annuity granted in consideration of relinquishing a business or a school, or in consideration of anything but money, does not require to be memorialized, *Crespigny v. Wittenoan*, 4 T. R. 790; *Hutton v. Lewis*, 5 T. R. 639. The consideration must be truly set forth in the memorial, *Washburn v. Birch*, 5 T. R. 472; *Watts v. Millard*, ib. 598; also the mode of payment, *Vauz v. Ansell*, 1 B. & P. 224; *Wright v. Read*, 3 T. R. 554. But where there are several deeds for securing an annuity, the consideration need not be repeated in them all, *Hodges v. Money*, 4 T. R. 500, provided there be words of reference in the deeds not con-

taining the consideration, to show that they are all connected, *Saunders v. Hardinge*, 5 T. R. 9.

Memorial.

Seventhly, *when void*. By the two first acts, the omission to register any of the deeds, rendered the whole transaction not only voidable, but absolutely void; but by the last act, all deeds inrolled are declared to be valid and effectual, notwithstanding the omission to inrol other deeds for securing the same annuity.

3. By the 55 Geo. 3, c. 184, the memorial of an annuity requires a stamp of 1*l*. and a further progressive duty of 10*s*. for every piece of vellum or parchment after the first on which the memorial is written.

Stamp duty on
the memorial.

No. LXXIX.

Memorial of Grant of an Annuity by Indenture.

No. LXXIX.

*Memorial of
Grant.*

A *Memorial* to be inrolled pursuant to act of parliament of an *Indenture* tripartite being a grant of an annuity bearing date the day of and made between (*grantor*) of &c. of the first part (*grantee*) of &c. spinster of the second part and (*trustee*) a trustee named by and on the behalf of the said (*grantee*) of the third part whereby in consideration of £ of &c. to the said (*grantor*) in hand paid by (*a*) A. B. for and in behalf of the said (*grantee*) for which a receipt is signed by the said (*grantor*) on the back of the said *Indenture* *He* the said (*grantor*) did give grant and confirm unto the said (*grantee*) and her assigns for and during her natural life one annuity or yearly rent-charge of £ of &c. to be issuing and payable yearly during the life of the said (*grantee*) out of *All that* &c. *To Hold* and enjoy the said annuity of £ unto the said (*grantee*) and her assigns during the term of her natural life clear of all taxes and deductions whatsoever payable quarterly on the days and in manner therein mentioned *And* for the better securing payment of the said annuity *He* the said (*grantor*) did demise unto the said (*T*.) all and singular the thereinbefore mentioned messuages or tenements lands and premises thereby charged with the said annuity *To Hold* the said premises thereby demised unto the said (*T*.) his executors &c. from the day next before the day of the date thereof for the term of ninety-nine

(a) As to the mode of payment, see sect. 2.

No. LXXIX.
Memorial of
Grant.

years if the said (*grantee*) should so long live at the yearly rent of a peppercorn only if lawfully demanded subject to redemption upon the due payment of the said annuity to the said (*grantee*) in manner therein mentioned The execution of which indenture whereof this is a memorial is witnessed by (a) F. I. of in the county of gentleman and I. C. of in the county of gentleman.

No. LXXX.
Memorial of
Bond, &c.

No. LXXX.

Of a Bond and Warrant of Attorney for securing the Payment of the same Annuity.

Also of a bond (b) or obligation bearing even date with the above mentioned indenture from the said (*grantor*) to the said (*grantee*) in the penal sum of £ with a condition thereunder written for making void the same upon payment by the said (*grantor*) unto the said (*grantee*) at the times and in manner in the above indenture mentioned The execution of which bond is witnessed by J. H. of &c. in the county of

And of a (b) warrant of attorney bearing date the same day of executed by the said (*grantor*) directed to certain attornies therein named empowering them to enter up judgment on the above mentioned bond at the suit of the said (*grantee*) in her Majesty's Court of Queen's Bench at Westminster The execution of which warrant of attorney by the said (*grantor*) is also witnessed by the said J. H.

No. LXXXI.
Release of an
Annuity.

No. LXXXI.

Release of an Annuity on a repurchase.

Recitals.

Annuity still
subsisting.

This Indenture made &c. Between (releasor) of &c. of the first part (trustee) a trustee named for and on behalf of (releasor) of &c. of the second part and (releasee) of &c. of the third part Whereas by Indenture &c. (recite grant of annuity see Assignment of Annuity) And Whereas &c. (recite warrant of attorney) And Whereas the annuity is still subsisting and all

(a) As to naming of witnesses, see sect. 2.

(b) As to what instrument must be memorialized, see sect. 2.

arrears of the same have been paid up to the day of the date of these presents as the said (*releasor*) doth hereby acknowledge *And Whereas* the said (*releasee*) hath agreed with the said (*releasor*) for the repurchase of the said annuity of £ at or for the price or sum of £ and it hath been thereupon agreed that the said annuity and the securities for the same should be released and the said term of ninety-nine years be surrendered in manner hereinafter mentioned *Now this Indenture witnesseth* That in consideration of the sum of £ &c. to the said (*releasor*) in hand paid by the said (*releasee*) the receipt &c. He the said (*releasor*) *Doth* hereby remise release acquit and for ever quit claim unto the said (*releasee*) his heirs executors administrators and assigns *The* said annuity secured by the said in part hereinbefore recited indenture and all arrears thereof and all powers and remedies for recovering and enforcing payment of the same *And also* the said judgment entered up against the said (*releasee*) at the suit of the said (*releasor*) and the full benefit of the same and all other securities entered into and given for securing the said annuity And all the estate right title and interest of him the said (*releasor*) of in to and out of the said annuity or &c. and the said judgment and securities and every part thereof *And* the said (*releasor*) doth hereby for himself &c. (covenant that he has done no act to incumber, see ASSIGNMENT) whereby the said annuity or any part thereof after the execution of these presents shall continue or be payable on the said messuage &c. or the said premises be charged with the same annuity or any part thereof *And this Indenture further witnesseth* That in further pursuance of the said agreement and in consideration of the premises *He* the said (*T.*) at the instance and by the direction of the said (*releasor*) testified &c. *Hath* surrendered and yielded up remised and released and by &c. doth surrender &c. *All that* messuage &c. and all and singular other the premises which by the said hereinbefore in part recited indenture were demised to the said (*T.*) his executors &c. for the term &c. determinable as aforesaid And all the estate &c. To the intent that the said term of ninety-nine years may be merged and extinguished by way of release of right surrender or otherwise cease determine and be void to all intents and purposes whatsoever *And* the said (*T.*) doth hereby covenant &c. (covenant by trustee that he has done no act to incumber &c.) *In witness &c.*

No. LXXXI.

*Release of an
Annuity.*

Testatum.

Further testimony.

No. LXXXI.
Release of an
Annuity.

Annuities in Deeds, see INDEX TO PRECEDENTS.

APPOINTMENTS.

1. Definition.

APPOINTMENTS IN EXECUTION OF A POWER.

2. *Operation of an Appointment in Execution of a Power.*
3. *Appointments by Females Covert.*
4. *Requisites of an Appointment.*
5. *Power of Revocation.*
6. *Distributive Appointments.*
Exclusive Appointments.
Illusory Appointment Act, 11 Geo. 4, & 1 Will. 4, c. 46.
7. *Effect of certain Words in Appointments.*

8. Stamp Duty on Appointments.

APPOINTMENTS DELEGATING AN AUTHORITY.

9. *Delegation of Authority.*
10. *Naked Authority, by whom exercised.*
11. *Distinction between a naked Authority and one coupled with an Interest.*
12. *Delegated Authority, how to be executed.*
13. *Not to be delegated.*

Definition.

SECT. 1. An appointment as a deed may be considered in two ways, either as a relative and dependent instrument, springing out of and deriving its force from the Statute of Uses; or as an irrelative and independent instrument, delegating an authority to one person to act for or in behalf of another, 1 Wood's Conv. 465.

APPOINTMENTS IN EXECUTION OF A POWER.

Operation of an
appointment in
execution of a
power.

2. An appointment, in the first sense of the word, is an instrument adapted for carrying into effect those particular modifications of uses which are denominated powers. Thus, suppose an estate be conveyed to A. and his heirs to the use of B. for life, remainder to such son as B. shall appoint, and B. appoints to the use of his first son; then the use vests in the son by the appointment, and the possession by the statute, which union of the use and possession constitutes what is termed the legal estate. The appointment operates not as a conveyance, but as the limitation of the use; the right to make this designation is termed the power; the exercise of the power is termed an appointment; the person exercising it the appointor, and the person taking under it the appointee, Butler's Co. Litt. 271 b, n. An appointment is, therefore, controlled by the pre-existing instrument on

which it is founded; for, in notion of law, any one taking by virtue of an appointment is considered as taking under the instrument giving the power; with this restriction, however, that reference must be had to the nature of the instruments in construing the validity of an appointment. If the power be executed by will, the interest of the appointee, who is considered in the light of a devisee, will be ambulatory and revocable like the will itself, and consequently subject to the chance of a lapse, if the appointee die in the lifetime of the appointor, *D. of Marlborough v. Godolphin*, 2 Ves. 61; but if made by any other instrument or deed, not in its nature revocable, the property upon which it attaches will be absolutely vested in the appointee, in like manner as if he had been named in the original conveyance. It follows, likewise, from the nature of this instrument, that no limitation in an appointment will be valid, unless it would have been so, if it had been made by the conveyance creating the power. Limitations, therefore, to the unborn children of an unborn child are void, because the law would not permit such a conveyance, as tending to a perpetuity, *Robinson v. Harcastle*, 2 T. R. 241.

Appointments.

3. An appointment is applicable, under the sanction of the Court of Chancery, to the disposition of separate property by a *feme covert*, who, though disabled at common law to make a will or regular conveyance, is allowed in equity a disposing power notwithstanding her coverture, and the instrument by which she exercises this power, whether in the shape of a will or otherwise, is considered as taking effect in the nature of an appointment. And in cases where married women are entitled to separate property in the hands of trustees, their appointment will be valid, although the trustees are not parties thereto, *Peacock v. Monk*, 2 Ves. 190; *Rippon v. Dawding*, Ambl. 565.

Appointment
by *femes covert*.

4. In framing a deed of appointment, it is not necessary to refer to or recite the deed creating the power, if it sufficiently appear that the party intend exercising it, 6 Co. 17; Cro. Eliz. 877. For this reason, it is usual, in deeds of appointment, for the party exercising the power to declare, that he acts not only in exercise of that particular power, but also of every other power enabling him in that behalf. This latter clause is said in some cases to have reached powers that were understood to be extinguished, 1 Sugd. Pow. 243, 6th edit. Likewise every incidental circumstance prescribed in the creation of the power ought to be complied with in the instrument by which the power is executed, ib. 264. If a writing is required, a disposition by parol is not valid, 1 Vern. 340. If a seal be required, a writing under hand will not be sufficient. So likewise as to signing, attestation, number and quality of witnesses, consent of particular persons, giving notice, &c., 1 Sugd. Pow. 294, 6th ed. If a deed be expressly required, it cannot be executed by will, *Darlington v. Pulteney*, Cowp. 260; but

Requisites of an
appointment.

Appointments. where a power is given generally, without any restriction as to the mode of execution, as "by any writing or instrument," it may be exercised by deed or will. (*As to appointments in a will, see post, WILLS, Pref.*)

Power of revocation. 5. A power of appointment includes in itself a power of revocation, although no such authority be expressly reserved in the deed creating the power. But where a power is executed by deed, the donee must expressly reserve a power of revocation in the deed executing the power, otherwise the appointment is irrevocable, even if the original power authorize the donee to appoint and revoke his appointment, *Hele v. Bond*, Prec. Chanc. 474; Sugd. Pow. 325, 6th ed. Where a power is executed by will, it is always revocable, although no express power of revocation is reserved, Sugd. *ub. sup.* Likewise a power given to one person cannot be given by him to a third person. A direction by an appointor to such a one, naming him, to appoint, limit or direct, as he shall think fit &c. will be void; for, the donee of the power having himself but a delegated authority, this would be contrary to the maxim in law, that *delegatus non potest delegare*, 2 Atk. 88; 2 Ves. 643. But if power be expressly reserved to be executed by the appointor and his assigns, an execution by an assignee will in such case be good, and a devisee will be a good assignee, within the words of that power, *T. Jones*, 110; 1 Vent. 338; 2 Show. 57. When a man has both a power and an interest, he is made not only to exercise his power, but also to convey his interest by grant (see PURCHASES). This, though not always necessary, is adopted by way of precaution, in case a power should not be well created, or be suspended or extinguished, Butl. Co. Litt. 271 b, n.

Distributive appointments. 6. Appointments under a power may be either distributive or exclusive. Where the power of the appointment is to be distributive, a certain share must be given to all; but where it is exclusive, the party appointing is at liberty to give to some to the exclusion of the rest.

Exclusive appointments. At law, any share, however small, will satisfy the terms of the power; but in equity, relief was given at an early period against any appointment technically called an illusory (in the Term Reports elusory) appointment, where the share was very disproportionate to the amount of the fund to be distributed, and the number of objects to participate of it, 1 T. R. 438; 1 Vern. 67; Sugd. Pow. 494, 6th ed. But, in consequence of the difficulty of determining what ought to be deemed a substantial share, so as to render an appointment valid, and of the frequent litigation which was occasioned by this uncertainty, it is now provided, by the Illusory Appointment Act, 11 Geo. 4 & 1 Will. 4, c. 46 (one of the acts brought in by Lord St. Leonards), that no appointment, which shall be made in exercise of any power or authority to appoint any property, real or personal, shall be invalid,

Illusory Appointment Act,
11 Geo. 4 & 1
Will. 4, c. 46.

on the ground that the share is unsubstantial, illusory or nominal; by which provision the jurisdiction of the Court of Chancery is taken away, and the doctrine of appointments is restored to its original state as at common law, Sugd. Acts, Jemmet's ed.

Appointments.

7. Where it is intended to give a power of appointing a fund to several objects, or any of them exclusively, the intention ought to be expressed with precision, as, "to all or every such one or more exclusively of the other or others of the objects as the donee shall appoint." It has been held, that a power to appoint amongst the children as the donee shall think proper, did not authorize an exclusive appointment, the word "amongst" being equivalent to "all and every," *Kemp v. Kemp*, 5 Ves. 849. And in an early case, upon a gift to the wife, upon trust and confidence that she would not dispose thereof but for the benefit of the children, it was determined that no child could be excluded, *Menzey v. Walker*, Cas. Ab. Eq. 72.

Effect of certain words in appointments.

8. By the 55 Geo. 3, c. 184, the stamp required for an appointment, not being by will or deed, in execution of a power is 1*l.* 15*s.*; and for every entire quantity of 1080 words over and above the first 1080 words a further progressive duty of 1*l.* 5*s.* By the 13 & 14 Vict. c. 97, the progressive duty is reduced to 10*s.* for every entire 1080 words over and above the first 1080 words. (As to appointments upon a sale or mortgage, see *post*, CONVEYANCE, MORTGAGE.)

Stamp duty on appointments.

APPOINTMENTS DELEGATING AN AUTHORITY.

9. A delegation of an authority must be by deed, in order to show that the person appointed actually has the power to represent his principal, and to what extent, Salk. 9. It is not however necessary for an attorney, having merely a naked authority given to him, to be a party to the deed appointing him, 2 Roll. Ab. 8, 9; Shep. Touchst. 217.

Delegation of authority.

10. Few persons are excluded from exercising a naked authority, to which they are delegated, for the execution of such an authority can be attended with no prejudice or inconvenience to the parties acting under it; therefore, infants and femes covert may act as attorneys, Perks. 148; Co. Litt. 52 a, and 112 a.

Naked authority by whom exercised.

11. The distinction between a naked authority and one coupled with an interest was formerly of greater importance than it is now, owing to the intervention of courts of equity. It was formerly held, that if one of two executors empowered by a will to sell lands died, the survivor could not sell, having merely a naked authority, Co. Litt. 113 a. But equity would now compel an execution of the power in favour of those for whom it was created, 1 Ch. Ca. 139; Harg. Co. Lit. 113 a, n. 2. At common law, if one of several executors empowered to sell lands refused, the others could not sell; but

Distinction between a naked authority and one coupled with an interest.

Appointments. by 21 Hen. 8, c. 4, the rest in that case are invested with the power of selling.

Delegated authority how to be executed.

12. When a person has an authority, as an attorney, to do any act, he ought to do it in the name of the person giving the authority, 9 Co. 76; Stra. 765. Where executors are empowered to sell lands, they may do it in their own name, 9 Co. 77 a. So when a man does an act which cannot be effectual, otherwise than as done by virtue of his authority, this shall be deemed to be in execution of his authority, although done in his own name, Salk. 95, 96.

Not to be delegated.

13. A deputy cannot appoint a deputy, nor a person having a power of attorney delegate his power to another, unless he be expressly authorized so to do by the deed of appointment, 2 Roll. Ab. 8; Bunb. 166.

No. LXXXII.

No. LXXXII.

Freeholds, &c. *Appointment of a Freehold Estate to Children, to be indorsed on a Deed of Release.*

Appointment.

Know all men by these Presents That I the within named (*husband*) by force and virtue of the power and authority to me in that behalf given or received in and by the within written indenture and of all other powers and authorities enabling me thereunto do by this my writing under my hand and seal attested by the persons whose names are hereunder subscribed as witnesses hereunto direct limit and appoint all and every the manors messuages lands tenements and hereditaments in and by the within written indenture granted and released or mentioned or intended so to be with the appurtenants thereof from and immediately after the decease of me the said (*H.*) and (*W.*) my now wife to the use of all and every the children [whether sons or daughters] of me the said (*H.*) by the said (*W.*) my wife born or to be born [except an eldest or only son for the time being of me and my said wife] to be equally divided between them share and share alike as tenants in common and not as joint tenants And the heirs of the respective bodies of all and every the said children lawfully issuing [except of such eldest or only son]

To the use of children equally.

Survivorship.

And if one or more such children shall happen to die without issue then as to the share or shares of him or her or them so dying without issue to and to the use of the survivors or others of them [except as aforesaid] share and share alike and the heirs of their respective bodies issuing [except as aforesaid] And if all such children but one shall happen to die without issue or if

there shall be but one such child besides an eldest or only son then to and to the use of such only child and the heirs of his or her body issuing And in default of such issue then to and to the use of such eldest or only son and the heirs of his body And in default of such issue then to and to the use of me the said (H.) and of my heirs and assigns for ever *Provided always* That if any younger son of me by my said wife shall by the death of an elder son without issue become an eldest or only son then and in such case and so often as the same shall happen the share and shares of such younger son so become an elder or only son shall be go and remain to the use of and amongst the rest of my said children and the heirs of their respective bodies in like manner as if such younger son had been actually dead without issue any thing herein contained to the contrary in any wise notwithstanding *Provided always* That it shall be lawful for me the said (H.) at any time or times during my life by any deed or by my last will and testament in writing to revoke alter make void or change all and every or any the uses and estates hereby limited or appointed of or concerning the said manor messuages lands tenements and hereditaments and every part thereof and by the said deed or will to limit direct and appoint the same or any part thereof to the use of all or any of the children by my said wife and the heirs of their or any of their respective bodies in such parts and proportions manner and form as I shall think fit with or without power of revocation any thing herein or in the within written indenture contained to the contrary in anywise notwithstanding *In witness &c.*

No. LXXXII.
Freeholds, &c.

Provisions to
a younger son
becoming an
elder.

Power of revo-
cation.

*Appointment under a Power in a Settlement where old Uses are
revoked and new ones are appointed, see post, PURCHASES.*

*Conveyance by Appointment and Grant from a Vendor to a
Purchaser, see post, PURCHASES.*

No. LXXXIII.

No. LXXXIII.

Of Freeholds
and Copyholds.

Appointment of Freehold and Copyhold Estates under a Power in a Settlement, with Power of Revocation, where the Legal Estate is vested in the Trustees.

This Indenture &c. Between (husband) of &c. and S. his wife of the first part (trustees) of &c. of the second part (eldest son) eldest son of the said (H.) and S. his wife of the third part (second son) second son of the said (H.) and S. his wife of the fourth part and (third son) third son and only other surviving child of the said (H.) and S. his wife and which said (T. S.) is a minor of the age of or thereabouts of the fifth part Whereas by an indenture of appointment and release bearing date the day of and made between the said (H.) and S. his wife of the one part and the said (T.) of the other part It was witnessed That in pursuance of and obedience to a decree or decretal order of the High Court of Chancery made in a cause wherein the said (H.) and S. his wife were plaintiffs and the said (T.) were defendants and in pursuance and by virtue of certain powers and authorities given and reserved to the said (wife) in that behalf and in exercise and execution thereof she the said (W.) with the privity and approbation of the said (H.) did direct limit and appoint that all and singular the freehold messuages or tenements hereditaments and premises thereafter mentioned and expressed to be thereby granted and released with their and every of their appurtenances should go be and remain to the use of the said (T.) their heirs and assigns for ever upon the trusts thereafter declared concerning the same And it was by the said indenture of appointment and release further witnessed that in further pursuance of the said decretal order the said (H.) and S. his wife did grant confirm and release to the said (T.) and their heirs All &c. To Hold the same unto and to the use of the said (T.) their heirs and assigns for ever upon the trusts thereafter declared of and concerning the same And by the said indenture now in recital it was declared and agreed between the said parties thereto and particularly the said (H.) did thereby for himself his heirs executors administrators and assigns and for the said S. his wife and her heirs covenant and agree with the said (T.) their heirs and assigns that the said (H.) and S. his wife together with any person or persons therein named should as soon as conveniently might be after payment

Recital of deed
of appointment,

and grant.

of a certain mortgage debt of £ surrender into the hands No. LXXXIII.
of the lord of the manor of L *All that* &c. holden of the *Of Freeholds*
said manor by the yearly rent of £ to the use of the said *and Copyholds.*

(*T.*) their heirs and assigns for ever according to the custom of the said manor upon the trusts thereafter declared concerning the same *And* it was by the said indenture now in recital mutually declared and agreed by and between all the said parties thereto that the said (*T.*) their heirs and assigns should from thenceforth stand and be seised of or entitled to and interested in all and singular the said freehold and customary or copyhold messuage lands tenements hereditaments and premises thereinbefore mentioned and described and thereby limited and appointed granted or released or intended so to be and covenanted to be surrendered respectively as aforesaid *In trust* for the said (*H.*) and his assigns during his life and after his decease *In trust* for the said (*W.*) and her assigns during her life for her jointure and in bar of dower and after the decease of the said (*H.*) and S. his wife or of the survivor of them then *In trust* for all and every the children of the said (*H.*) on the body of the said (*W.*) begotten for such estates at such ages and in such parts shares and proportions and with such remainders and limitations over and charged and chargeable with the payment of such annual or gross sums [such remainders or limitations over being and charged to be for the benefit of such children some or one of them] and in such manner and form as they the said (*H.*) and S. his wife at any time or times during their joint lives by any deed or deeds in writing with or without power of revocation to be by both of them sealed and delivered in the presence of two or more credible witnesses should jointly direct or appoint and in default of such joint direction or appointment as the survivor of them the said (*H.*) and S. his wife by any deed &c. executed as aforesaid or by his or her last will and testament in writing or any writing purporting to be in the nature of his or her last will and testament or any codicil should direct or appoint and in default of any such direction or appointment upon the several trusts mentioned in the indenture now in recital *And whereas* by an indenture bearing date the day of [indorsed on the said recited indenture of appointment and release] and made between the said (*H.*) and S. his wife of the first part the said (*T.*) of the second part and (*new trustees*) of &c. of the third part after reciting that the said mortgage debt of £ had been paid but that no sur-

Uses.

Appointment of new trustee.

No. LXXXIII. render of the said copyhold hereditament had been made to the said (T.) their heirs and assigns in pursuance of the covenant in the said recited indenture for that purpose contained and that the said (*one old trustee*) was desirous of relinquishing the trusts by the same indenture reposed in him jointly with the said (*other O. T.*) and had applied unto the said (H.) and S. his wife to be discharged therefrom and that thereupon the said (H.) and S. his wife had applied unto and had requested the said (N. T.) to become a trustee for the purposes of the same indenture jointly with the said (O. T.) in the stead and room of the said (*one O. T.*) to which the said (N. T.) had consented and agreed *It was by the Indenture* now in recital witnessed that the said (H.) and S. his wife did nominate constitute and appoint the said (N. T.) to be a trustee in the room and stead of the said (O. T.) to act with the said (*other O. T.*) in the trusts mentioned in the said indenture *And* by the said indenture now in recital the said (O. T.) at the request and by the direction of the said (H.) and S. his wife *Did* bargain sell and release unto the said (N. T.) and his heirs *All* the premises so granted and released unto and to the use of the said (O. T.) their heirs and assigns *To hold* the same unto the said (N. T.) his heirs and assigns to the use of the said (O. T.) and himself the said (N. T.) their heirs and assigns for ever upon the trusts declared in the said indenture *And* in the said indenture is contained a covenant on the part of the said (H.) to surrender or procure to be surrendered all the copyholds to the use of the said (O. and N. T.) their heirs and assigns upon the trusts as aforesaid *Now this Indenture witnesseth* that by force and virtue and in exercise and execution of the power or authority to them the said (H.) and S. his wife for this purpose given by the said recited indenture of the day of and of all other powers and authorities in anywise enabling them or either of them in this behalf they the said (H.) and S. his wife do jointly direct and appoint that the said (O. and N. T.) their heirs and assigns shall immediately from and after the decease of the survivor of them the said (H.) and S. his wife stand and be seised of all and singular the said freehold and customary or copyhold messuages lands tenements hereditaments and premises described in the said recited indenture of appointment and release and so respectively conveyed and covenanted to be surrendered to them as aforesaid and of their and every of their appurtenants upon and subject to the proviso hereinafter expressed and contained of and concerning the same that is to say as to one equal un-

*Of Freeholds
and Copyholds.*

Grant to the
new trustee.

Covenant to
surrender copy-
holds.

Appointment.

divided third part or share [the whole into three equal parts or shares to be divided] of and in the said freehold and customary &c. with the appurtenants *In trust* for the said (*E. S.*) his heirs and assigns for ever *And* as to one other equal undivided third part &c. of and in the same freehold &c. *In trust* for the said (*S. S.*) his heirs and assigns for ever *And* as to the remaining undivided third part &c. *In trust* for the said (*T. S.*) his heirs and assigns for ever *But* if the said (*T. S.*) shall die under the age of 21 years without leaving issue of his body living at the time of his decease then *In trust* for the said (*E.*) and (*S. S.*) in equal shares as tenants in common and for their respective heirs and assigns for ever *Provided always* and the said (*H.*) and *S.* his wife do hereby further direct and appoint that it shall be lawful for them the said (*H.*) &c. at any time or times during their joint lives by any deed or deeds writing or writings with or without power of revocation (*a*) to be by both of them sealed and delivered in the presence of two or more credible witnesses or for the survivor of them the said (*H.*) &c. at any time or times during the life of such survivor by any deed &c. to be by him or her executed as aforesaid or by his or her last will or testament in writing or any writing &c. to be by him or her signed and published in the presence of and to be attested by three or more credible witnesses to revoke all or any of the trusts hereinbefore appointed of and concerning the said messuages &c. and in lieu of the trusts so revoked to appoint such other trusts as the said (*H.*) &c. or the survivor of them shall conformably to the power or authority in that behalf contained in the said recited indenture think proper any thing hereinbefore contained to the contrary notwithstanding.

No. LXXXIII.
*Of Freeholds
and Copyholds.*

Uses.

Power of revocation.

In witness &c.



No. LXXXIV.

Appointment of a Freehold in trust for Creditors.

This Indenture &c. Between (*Debtor*) of &c. of the one part and (*Trustees*) of &c. of the other part three creditors and also trustees named and appointed in and by an indenture of assignment of three parts bearing even date herewith and made between

No. LXXXIV.
*In Trust for
Creditors.*

(*a*) In an appointment by deed, such a power must be expressly reserved, see *ante*, Pref. sect. 5.

No. LXXXIV. the said (*D.*) of the first part the said (*T.*) of the second part and
In Trust for (*Creditors*) the several persons parties thereto being joint and se-
Creditors. parate creditors of the said (*D.*) of the third part *Whereas* by
 Recital of feoff- indenture of feoffment bearing date the day of [with livery
 ment to debtor. of seisin thereon indorsed] and made between (*Husband*) and S.
 his wife then late only child and heiress of therein described
 of the first part the said (*D.*) of the second part and (*Trustee*) of
 &c. a trustee for the said (*D.*) of the third part *It is witnessed*
 that for and in consideration of £ to the said (*H.*) and S. his
 wife paid by the said (*D.*) and 5s. to him paid by the said (*T.*) he
 the said (*H.*) and S. his wife did by the direction of the said (*D.*)
 give grant enfeoff and confirm unto the said (*D.*) his heirs and
 assigns *All &c.* *To hold* the same to the said (*D.*) his heirs and
 assigns to the uses therein declared that is to say *To the use* and
 behoof of such person and persons and to and for such estates
 uses intents and purposes as the said (*D.*) in and by any deed
 or deeds writing or writings to be sealed and delivered by him
 in the presence of and to be attested by two or more credible
 witnesses or in and by his last will and testament in writing to
 be by him executed and attested as therein mentioned should
 direct declare give devise convey grant limit or appoint the same
 and in the meantime and until such direction &c. should be made
 and executed And subject thereto *To the use* of the said (*D.*)
 and his assigns for and during the term of his natural life without
 impeachment of waste And from and after the determination
 of that estate by any manner in his lifetime *To the use* of the
 said (*T.*) his heirs and assigns for and during the natural life of
 the said (*D.*) *In trust* nevertheless for him the said (*D.*) and
 his assigns and to permit and suffer him and them to receive and
 take the rents issues and profits to and for his and their own use
 and benefit and from and immediately after the determination of
 the estate so limited to the said (*T.*) and his heirs as aforesaid
 And subject thereto *To the use* of the said (*D.*) his heirs and
 assigns for ever *And whereas* the said (*D.*) entered into part-
 nership with in the trade of at in the
 county of and by divers losses and misfortunes they are
 become unable to pay and satisfy their joint and separate cre-
 ditors the whole of their respective debts *And whereas* for the
 purpose of making provision for the payment as well of the said
 joint debts of the said (*D.*) and his said partners as of the sepa-
 rate debts of the said (*D.*) the said (*D.*) proposed to limit and
 appoint the said hereditaments and premises hereinbefore and

Power of ap-
pointment.

Losses by
debtor and
partner.

hereinafter mentioned to the uses and upon the trusts and subject to the proviso hereinafter contained and expressed *Now this Indenture witnesseth* that in execution of his said proposal and to the end intent and purpose aforesaid *He* the said (*D.*) by virtue and in pursuance of the power in the hereinbefore recited indenture of feoffment contained and in the exercise of all other powers and authorities to him thereby reserved in him now being and to him of right belonging *Doth* by this deed in writing sealed and delivered by him the said (*D.*) and attested by two credible witnesses whose names are hereon indorsed direct limit and appoint that all those the and hereditaments hereinafter mentioned and intended to be hereby granted with the appurtenants as hereinafter mentioned shall henceforth go and remain to the use of the said (*T.*) their heirs and assigns *And this Indenture also witnesseth* That for further effectuating the said proposal he the said (*D.*) doth hereby grant unto the said (*T.*) their heirs and assigns *All* &c. and all the estate right title interest claim and demand whatsoever of him the said (*D.*) of in to out of or upon the said premises *To Hold* the said premises unto the said (*T.*) their heirs and assigns to the use of the said (*T.*) their heirs and assigns for ever *Upon Trust* nevertheless to cause the said hereditaments and premises to be sold in the most advantageous manner and for the best price that can be obtained for the same and to carry over pay and apply the net proceeds of such sale or sales to the account of the separate estate of the said (*D.*) under for and applicable to the respective uses and purposes which are in and by the said above-mentioned indenture of assignment for the benefit of the joint and separate creditors of himself the said (*D.*) and of the said partnership expressed and declared and to and for no other use intent or purpose whatsoever *And* it is hereby declared that the receipt and receipts of the said (*T.*) and the survivors or survivor of them and the executors or administrators of such survivor shall be good and sufficient discharges to any purchaser or purchasers of all or any part of the said hereditaments and premises at any such sale or sales and that such purchaser or &c. shall not be bound to see to the application or be in any respect liable for or accountable to any persons whomsoever either for the nonapplication or misapplication of all or any part of the purchase-money to be paid by them for the same *And also* the said (*D.*) doth hereby further covenant &c. to and with the said (*T.*) their heirs and assigns that he the said (*D.*) hath not at any

No. LXXXIV.
*In Trust for
Creditors.*

Testatum.
Appointment.

Grant.

Habendum.

Trusts.

Receipts of
trustee to be
valid dis-
charges.

Debtor or trustee
done no act
to incumber.

No. LXXXIV. time or times heretofore made done committed or executed any
In Trust for act deed matter or thing whatsoever whereby or on account
Creditors. whereof the said hereditaments and premises or any part thereof
 are or can shall or may be incumbered charged aliened or en-
Covenants for feoffed limited or appointed in any manner howsoever and like-
title. wise that he the said (*D.*) for and notwithstanding any act deed
 matter or thing whatsoever to the contrary now hath in himself
 good right full power and lawful and absolute authority to limit
 and appoint and also to grant the same to the uses and in
 manner aforesaid *And further* that the said (*D.*) his heirs and
 assigns and also the said (*T.*) his heirs and assigns and all and
 every person and persons whomsoever claiming and to claim under
 him and them or any of them shall and will at the request of the
 said (*T.*) their heirs and assigns execute and perform all such
 other and further acts deeds matters and things whatsoever which
 shall become necessary in and towards the better more perfectly
 and absolutely granting conveying assuring enfeoffing limiting
 and appointing all or any part of the said hereditaments and
 premises either to them the said (*T.*) their heirs and assigns or to
 such person or persons purchaser or purchasers as they shall direct
 and appoint.

In witness &c.

Mortgage by Appointment and Grant, see post, MORTGAGES.

*Appointment and Demise to Trustees for a Term of a certain
 Part of Lands charged with Portions for younger Children,
 Upon Trust to indemnify the Purchasers of other Parts of the
 same Lands from such Portions (Proviso for cesser of Term),
 see post, PURCHASES.*

*Appointment and Assignment of Two-Fourth Parts of Monies to
 arise from the Sale of certain Estates, see post, PURCHASES.*

No. LXXXV.

No. LXXXV.
Of a Jointure.

Appointment of a Jointure by Virtue of a Power under a Will.

Obs. A jointure is strictly a joint estate in freehold lands, limited
 to the husband and wife; but on account of the numerous incon-

veniences which attended such a limitation of lands, as well to the widow as to the heir, it has long been the general practice to limit a rent-charge to the intended wife for her life by way of jointure, to commence from the death of the husband, with powers of distress and entry, and generally with a term for years to a trustee for further securing the payment thereof. By the Statute of Uses, 27 Hen. 8, c. 10, s. 6, such a jointure or settlement upon a wife before marriage will be a bar of her dower in the case of adult women, but it has been held not to extend to infants. An infant may, therefore, notwithstanding a jointure settled upon her, waive it, and elect to take her dower. So if a jointure be made after marriage, it would not have barred the wife of her dower, either at law or in equity, unless she accept the jointure after her husband's death, Noy's Max. 40; in this latter case it is presumed that the dower of a woman married since the 1st of January, 1834, is now barred by 3 & 4 Will. 4, c. 105, ss. 6, 7.

No. LXXXV.

Of a Jointure.

This Indenture made &c. Between (*intended husband*) of &c. grandson &c. of the first part (*father of intended wife*) of &c. and (*intended wife*) spinster and eldest daughter of the said (*father*) of the second part and (*trustees*) of &c. of the third part *Whereas* [recite the will of the grandfather] whereby among other things he devised all his manors messuages and tenements lands and hereditaments unto the said (*I. H.*) his grandson for life In which said will is contained a power or proviso for the said (*I. H.*) to charge any part or parts of the said manors lands and premises with any sum of money by way of annuity or rent-charge for the jointure of any woman he might marry but so as that such annual sum or rent-charge should not exceed £ which the said grandson should receive for the marriage portion of such woman *And whereas* [recite testator's death without revoking his will, and probate of the will] *And whereas* a marriage is intended to be shortly had and solemnized between the said (*I. H.*) and said (*I. W.*) *Now this Indenture witnesseth* That in consideration of the said intended marriage and the sum of £ to the said (*I. H.*) in hand &c. by the said (*F. of the said I. W.*) in full for the marriage portion of the said (*I. W.*) his daughter the receipt whereof the said (*I. H.*) doth hereby acknowledge And for making such settlement jointure and provision for and upon the said (*I. W.*) as aforesaid He the said (*I. H.*) by virtue and in exercise and execution of the power and authority to him given and reserved in and by the said in part recited will and all and every other power and powers authority and authorities to him in that be-

Recital of will.

Of death of testator.

Of contract for a marriage.

Testatum.

No. LXXXV. half given or any ways enabling thereunto *Doth* by this
Of a Jointure. present writing signed sealed and delivered by him the said

Appointment of
 £ as a
 jointure to in-
 tended wife.

(*I. H.*) in the presence of the two credible witnesses whose
 names are intended to be hereon written or indorsed as witnesses
 attesting the same grant limit and appoint unto the said (*I. W.*)

One annual sum or yearly charge of £ being after the rate
 of £ per year for and in respect of every 100*l.* which the

said (*I. H.*) hath actually received as the present portion or
 fortune of the said (*I. W.*) his intended wife free and clear of
 and from all taxes charges and deductions whatsoever parlia-
 mentary or otherwise to be issuing payable had and received
 out of and from and charged and chargeable upon all and
 singular the said manors messuages and tenements lands here-
 ditaments &c. (*parcels*) being the same lands and hereditaments
 as were devised to him by the will of the said (*testator*) as

Habendum.

aforesaid *To Have* hold take and enjoy the said annual sum or
 yearly rent-charge of £ hereby granted limited and ap-
 pointed or intended so to be unto the said (*I. W.*) and her assigns
 to commence in possession from and immediately after the de-
 cease of the said (*I. H.*) for and during the term of her natural
 life in case the said intended marriage shall take effect and she
 shall survive the said (*I. H.*) her said intended husband for or in
 nature of a jointure and in lieu bar and satisfaction of the dower
 freebench and thirds at common law which she the said (*I. W.*)
 shall or may at any time or times be entitled to or otherwise
 might have or claim in to or out of all and every or any of the
 said manors messuages or tenements lands and hereditaments
 whereof or whereto the said (*I. H.*) shall be seised or entitled
 for an estate of inheritance and to be paid to her the said (*I. W.*)
 and her assigns &c. And also a proportional part &c. And the
 said (*I. H.*) doth hereby for himself &c. (*Power of distress and*
entry, see Grant of an Annuity) And the said (*I. H.*) doth
 hereby for himself his heirs covenant &c. with and to the said
 (*T.*) their executors &c. in manner following that is to say That
 he the said (*I. H.*) at the time of the sealing and delivery of
 these presents hath good right full power and lawful authority
 under and by virtue of the said in part recited will to grant limit
 and appoint unto and to the use of the said (*I. W.*) the said
 annual sum or yearly rent-charge of £ and to make the
 same issuable out of and chargeable upon the aforesaid manors
 messuages lands tenements and hereditaments and premises in
 the manner hereinbefore expressed *And further* That the said

Covenants for
 title.

That husband
 hath power to
 appoint.

(*I. W.*) and her assigns shall and may at all times during the term of her natural life in case the said intended marriage shall take effect and she shall happen to survive the said (*I. H.*) her intended husband peaceably and quietly have hold receive perceive take and enjoy the said annual sum or yearly rent-charge of £ so granted limited and appointed to her in jointure as aforesaid to and for her and their own proper use and benefit *And moreover* that he the said (*I. H.*) and his heirs and all other persons claiming or to claim by from or under him or them or by from or under the said (*testator*) deceased shall and will from time to time and at all times at the request of the said (*T.*) but at his and their own proper costs do all such acts and things for the further better and more perfect granting limiting appointing and assuring unto and to the use of the said (*I. W.*) and her assigns during her life in case the intended marriage shall take effect and she shall survive the said (*I. H.*) her intended husband the said annual sum of £ hereinbefore mentioned to be hereby limited to and for her jointure as aforesaid as by the said (*T.*) or the survivor of them or the executors &c. of such survivors or his or their counsel in the law shall be reasonably advised devised or required *In witness &c.*

No. LXXXV.
Of a Jointure.

Quiet enjoyment.

Free from incumbrances.

Further assurance.

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No. LXXXVI.

Appointment and Disposition by a Married Woman.

No. LXXXVI.

Married Woman.

Obs. As to the disposition of property by married women, see *ante*, Pref. sect. 3.

To all persons to whom these presents shall come (appointor) of &c. sendeth greeting *Whereas* the said (*A.*) then (*maiden name*) by indentures of lease and release bearing date respectively the days of in consideration of a marriage then intended between the said (*A.*) and (*husband*) of &c. Did grant convey release and confirm unto (*trustees*) all that messuage &c. *To be holden* unto the said (*T.*) their heirs and assigns for ever to the use of the said (*A.*) until the said intended marriage should take effect and afterwards to the use of the said (*H.*) for the term of his natural life and after his decease to the use of the said (*A.*) for the term of her natural life without impeachment of waste with remainder to &c. in trust for &c. *And* from and after the end or other determination of the said term of &c. to

Recital of settlements.

- No. LXXXVI. the use of the heirs of the body of the said (A.) by the said (H.) lawfully begotten *And* for default of such heirs to the use of such person and persons as the said (A.) with or without the consent of the said (H.) by any writing under her hand and seal and testified by two or more credible witnesses or by her last will and testament in writing should direct limit or appoint the same and in default of such direction limitation and appointment as aforesaid or so far as the same should not extend to the use of the said (H.) his heirs and assigns for ever *And whereas* the said marriage did afterwards take effect and the said (A.) hath not yet had nor is there any likelihood of her having any child or children of her body by the said (H.) *Now know ye* That the said (A.) in pursuance of the power to her reserved and given in and by the said in part recited indenture of release hath limited directed and appointed and by this present writing under &c. *Doth* limit direct and appoint that all and singular the said premises hereinbefore mentioned to be comprised in the said in part recited indenture with the appurtenances shall from and after the several deceases of them the said (H.) and the said (W.) be and remain and the said (T.) and their heirs and all and every other person and persons and his and their heirs standing and being seised of and in the said messuage tenement and premises above recited shall at all times after the death of the said (H.) and (W.) stand and be seised thereof and of every part and parcel thereof with the appurtenances to the use and behoof of &c. his heirs and assigns for ever and to and for no other use intent or purpose whatsoever *Provided nevertheless* That these presents shall not nor shall any thing herein contained extend or be construed to extend to the prejudice of any issue of the said (W.) by the said (H.) in case such issue shall happen to be hereafter born *In witness &c.*



No.
LXXXVII.

No. LXXXVII.

By a Mother. Appointment by a Mother in Favour of her Son under a Power in an Act of Parliament.

Recital of act
of parliament.

To all to whom &c. (see last precedent) I (appointor) widow and relic of W. B. of &c. send greeting Pursuant to and by virtue and in exercise and execution of the power and authority to me for that purpose given or limited or in me vested by an act

of parliament made and passed in the year of the reign
of her present Majesty intituled "An act for discharging the uses
and trusts of certain manors &c. settled upon and for the use of
W. B. and M. his wife" &c. and of every other power or autho-
rity whatsoever in anywise enabling me in this behalf I the said
(*appointor*) *Do* by this deed or writing under my hand and seal
executed by me in the presence of the three persons whose
names are intended to be indorsed hereon as witnesses to my
signing sealing and delivering these presents limit direct and
appoint that all the manors or reputed manors of C. in the county
of B. and all and every the messuages farms lands tenements
and hereditaments situate lying and being in or some or
one of them in the said act particularly mentioned [save and
except the messuages &c. now in the occupation of or
either of them or either of their assigns or undertenants] with
their and every of their respective members and appurtenants
shall after the decease of me the said (*appointor*) be and remain
To and for the sole and proper use and behoof of my eldest
son W. B. his heirs and assigns for ever and to and for no other
use intent or purpose whatsoever subject to nevertheless and
without prejudice to a certain term of 500 years for which I the
said (*appointor*) by a deed poll bearing date &c. have limited
and appointed among other hereditaments the said manors and
premises hereby limited with their respective appurtenances to
my daughter S. now the wife of S. G. lieutenant in her Majesty's
 regiment &c. and also subject and without prejudice to
the sum of £ secured by the said term and the interest
thereof

No.
LXXXVII.
By a Mother.

Appointment
by mother.

Subject to term
of 500 years.

In witness &c.

No. LXXXVIII.

No.
LXXXVIII.
*Of Money to be
paid to Bankers.*

*Appointment of Money to be paid by Trustees to Bankers to be
drawn for by a Married Woman for her separate Use or re-
ceived by her.*

*To all to whom these presents shall come or be shown (husband)
of &c. and B. his wife formerly (maiden name) spinster severally
send greeting*

Whereas (recite settlement) *And whereas* the said legacy of Recitals.
£ with a small arrear of interest thereon is forthwith to be
received by the said (*trustees*) upon under and subject to the

No.
I.XXXVIII.
Of Money to be
paid to Bankers.

trusts declared and expressed in and by the said hereinbefore in part recited indenture of settlement *And whereas* the said (*Wife*) is desirous that the said sum of £ and the interest due and to become due for the same should be paid into the bank of bankers and copartners subject to the order and disposition of the said (*W.*) notwithstanding her coverture and the said (*H.*) hath agreed to join with her in appointing the said sum of £ and the interest due and to become due for the same to be paid into the bank of the said subject to such order of the said (*W.*) as aforesaid.

Appointment.

Now know ye That for divers good causes and considerations the said (*H.*) thereunto especially moving and by virtue and in pursuance and exercise of the power or authority given limited or reserved to the said (*H.*) and B. his wife jointly as aforesaid in and by the said in part recited indenture of settlement and by virtue and in exercise and execution of all and every power and powers authority and authorities enabling him the said (*H.*) and B. his wife jointly and the said (*W.*) solely in this behalf they the said (*H.*) and B. his wife by this their deed or instrument in writing signed sealed and delivered by them in the presence of two credible witnesses and to be attested by the same witnesses do jointly direct and appoint And the said (*W.*) by this her deed note or instrument in writing under hand and signed sealed and delivered by her and to be attested as aforesaid doth direct and appoint that the said (*T.*) or the survivor of them or the executors administrators or assigns of such survivor do and shall forthwith or as soon as conveniently may be after the said legacy or sum of £ and the interest due and to become due for the same shall be paid to them or him pay the same legacy &c. and the interest due and to become due for the same in the meantime till such payment into the bank of the said to the credit of an account to be opened and to be kept with the said *To the intent* that the same principal sum of £ and interest shall be at the disposal of the said (*W.*) in the same manner to all intents and purposes as if she was sole and unmarried without any control or interference by or on the part of the said (*H.*) and so and in such manner that payments to the said (*W.*) personally with or without any writing or any other disposition of the same principal &c. or any part thereof pursuant to the order banking cheques bills of exchange deeds wills or any other writing under the hand of the said (*W.*) may be effectual discharges to the said their executors &c. or any of them for so much and such

parts thereof as shall be paid as aforesaid And the said (*bankers*) their executors &c. shall not be obliged or required to see to the application or be answerable or accountable for the misapplication or nonapplication of the monies to be paid to or to the order of the said (*W.*) as aforesaid And moreover that on payment of the said sum of £ &c. into the said bank of or the survivor or survivors of them and notwithstanding the death of any one or more of the said partners or the admission of any other person or persons into the partnership in the mean time the said (*T.*) their heirs executors administrators and assigns shall be acquitted and discharged of and from any other or further payment of the same principal &c. which shall be paid by him or them and also of and from the trusts declared thereof or any liability for the misapplication or nonapplication of the same In witness &c.

No.
LXXXVIII.
*Of Money to be
paid to Bankers.*

No. LXXXIX.

Appointment and Disposition of Money by a Married Woman.

No. LXXXIX.
Of Money.

To all &c. (see *last precedent*) Whereas in and by certain articles of agreement bearing date &c. and made between &c. reciting among other things That there was a marriage intended to be had between the said (*Appointor*) and (*Husband*) of &c. And that (*Trustees*) were possessed of and interested in a mortgage made by &c. In trust for the said (*A.*) he the said (*H.*) did thereby covenant and agree with the said (*T.*) that they the said (*T.*) should from thenceforth stand possessed of and interested in the said sum of £ owing by the said (*mortgagor*) and in the mortgaged lands whereby the same was secured upon the trusts and to and for the intents and purposes following that is to say In trust That they should receive the interest thereof and pay the same into the hands of the said (*A.*) for her separate use and that the said (*H.*) should have nothing to do therewith And further that the said (*A.*) might during her life or by her last will or by any other writing whether she should be sole or under coverture without the consent of the said (*H.*) give and dispose of the said sum of £ or any part thereof to such person and persons and in such manner and form as she should think fit And whereas the said (*A.*) hath since intermarried with the said (*H.*) and hath received all the interest of the said sum of £ until the day of the date hereof and the said (*mortgagor*) hath also paid in the said principal sum of £ Now &c. (see *Testatum.*)

Recital of a
conveyance to
trustees of a
mortgage to the
use of wife.

Wife to ap-
point.

No. LXXXIX
Of Money.

last precedent) that the said (A.) by virtue &c. doth hereby dispose direct and appoint the said (T.) to pay £ part of the above-mentioned sum of £ unto &c. and the sum of £ being the residue thereof unto &c. And the said (A.) doth hereby declare that such payments to the said &c. with each of their receipts respectively shall be as effectual and full discharges as though the said £ was actually paid to and received by herself *In witness &c.*



No. XC.
To raise
Portions.

No. XC.

Appointment in pursuance of a Power to Trustees for a Term for raising Portions for younger Children.

Recital of
power.

This Indenture made &c. Between T. D. of &c. of the first part A. D. spinster eldest daughter of the said T. D. of the second part and (Trustees) of &c. of the third part *Whereas* by an indenture of release dated grounded on a lease for a year and made between and by a common recovery duly suffered in pursuance thereof in or as of term *All &c. (description of parcels)* with the appurtenants were conveyed and assigned and by the said indenture limited to the use of A. B. and his assigns for his life with remainder to the use of the said T. D. and his assigns for his life with divers remainders over And it was by the said indenture declared that the said T. D. might when entitled to the possession or to the receipt of the rents and profits of the hereditaments thereby limited by any deed or deeds to be by him executed in the presence of and attested by two or more credible witnesses or by will or codicil charge all or any part of the same hereditaments with the payment of any sum or sums not exceeding the sum of £ for the portion or portions of his child or any of his children other than an eldest or only son to be an interest vested or interests vested and to be paid to or among such child or children or any one or more of them in such shares at such time or times and in such manner as the said T. D. should appoint *And also* that the said T. D. might by the same or any other deed or deeds or by will or codicil appoint the hereditaments so to be charged to any person or persons for any term or terms of years upon trust by sale or mortgage of the hereditaments so to be appointed or any part thereof for all or any part of the said term or terms or by any other ways or means to raise the sum or sums of money so to be appointed with interest

for the same until raised at any rate not exceeding 5*l.* per cent. per annum *And whereas* the said A. B. died several years ago *And whereas* the said T. D. is desirous of executing the power limited to him by the said recited indenture of charging the said premises with the payment of the said sum of £ and hath agreed to limit the sum of £ being a moiety or half part of the said sum of £ to be paid to the said A. D. as and for her share or proportion of the said sum of £ as hereinafter is expressed *Now this Indenture witnesseth* that in pursuance and part performance of the aforesaid agreement in this behalf and by force and virtue and in exercise and execution of the power or authority to the said T. D. given limited or reserved by the said recited indenture as aforesaid and all and every other power &c. to him belonging in him vested or in anywise him enabling in this behalf and in exercise and execution thereof He the said T. D. by this his deed in writing duly executed by him in the presence of and attested by the two credible persons whose names are intended to be hereon indorsed as witnesses to the execution of these presents by him the said T. D. *Doth charge* *All those* manors messuages lands and hereditaments comprised in the said indenture of with the payment of the sum of £ for the portions and maintenance of all and every the child and children of the body of him the said T. D. begotten and to be begotten [other than and except an eldest or only son] *And this Indenture further witnesseth* that in further pursuance &c. and for the better securing the payment of the said sum of £ He the said T. D. by force and virtue and in further pursuance of the said power *Doth appoint* that *All and singular* the said manors messuages lands and hereditaments hereinbefore particularly mentioned and described and by these presents charged with the payment of the said sum of £ or intended so to be with their and every of their rights members and appurtenants shall from henceforth go remain and be to the use of the said (T.) their executors &c. for and during and unto the full end and term of 1000 years fully complete and ended without impeachment for any manner of waste But nevertheless upon the trusts and for the intents and purposes and under and subject to the proviso and condition hereinafter declared and contained of and concerning the same [that is to say] *Upon Trust* that the said (T.) or the survivor of them his executors administrators or assigns do and shall by mortgage sale demise or disposition of the said manors and premises comprised in the said term or any

No. XC.

To raise
Portions.

Death of A. B.

Testatum.

Execution of
the power.Further testa-
tum.Demise to trus-
tees.Term of 1000
years.

No. XC.
To raise
Portions.

Proviso for
cesser of term.

part thereof for all or any part of the said term or by with or out of the rents issues or profits of the said premises or any part thereof or by bringing actions against all or any of the tenants or occupiers of the said premises for recovery of the rents in arrear or by all or any of the aforesaid ways and means or by any other ways or means whatsoever as they the said (T.) or the survivor &c. shall think fit levy raise and pay the said sum of £ for the portions &c. [other than and except an eldest or only son] and do and shall pay the sum of £ [being a moiety &c. of the said sum of £] to the said A. D. or her assigns on the day of this present month in full of her part share and proportion of the said sum of £ and do and shall by the ways &c. levy raise and pay the sum of £ the remainder of the said sum of £ with interest thereof at the rate of £ per cent. per annum to all and every the child &c. [other than and except an eldest or only son and also other than and except the said A. D.] at such time or times in such parts &c. as the said T. D. by any deed or deeds in writing with or without power of revocation to be by him sealed &c. shall direct limit or appoint *Provided nevertheless* and it is hereby declared and agreed by and between the said parties to these presents that if the said T. D. or such other person or persons to whom the next estate of freehold and inheritance of and in the said manors &c. comprised in the said term of &c. in reversion or remainder expectant on the determination of the said term shall for the time being belong do and shall well and truly pay or cause to be paid to the said A. D. her executors administrators or assigns the sum of £ with interest for the same at the rate as aforesaid and do and shall pay or cause to be paid to the said (T.) or the survivor &c. or well and sufficiently to their or his good liking secure to be paid the said sum of £ the remainder &c. for the portions of all &c. [other than &c. and also other than and except the said A. D.] at such time &c. as shall be directed by the same T. D. as aforesaid And in case they the said (T.) and each of them and the executors &c. of each of them shall be fully reimbursed and satisfied all costs charges and expenses occasioned by or relating to the trusts hereby in them reposed and which it shall be lawful for them respectively to deduct and retain out of the rents issues and profits of the said premises *Then* and from thenceforth the said term of &c. of and in the said manors &c. therein comprised or so much thereof respectively as shall remain unsold or undisposed of for the pur-

poses aforesaid shall cease determine and be utterly void to all intents and purposes whatsoever anything hereinbefore contained to the contrary thereof in anywise notwithstanding *And* the said T. D. for himself his heirs executors and administrators doth covenant &c. to and with the said (T.) their executors &c. by these presents in manner following [that is to say] That he the said T. D. and his heirs or such person or persons as shall be entitled to the reversion and remainder of the said premises expectant &c. shall and will from time to time pay and keep down all interest after the rate as aforesaid which shall occur or become payable for or in respect of the said sum of £ so hereby directed to be paid to the said A. D. from the said day &c. until the last-mentioned sum of £ shall be raised and paid to the said A. D. and shall and will also pay the said sum of £ the remainder of the said sum of £ from such time as the same or any part or parts thereof shall become due and payable by virtue of any direction limitation or appointment to be made by him the said T. D. *And* also that he the said T. D. now hath good right full power and lawful and absolute authority to charge the said hereinbefore mentioned manors and premises with the payment of the aforesaid sum of £ part of the said sum of to be paid to the said A. D. her executors administrators or assigns as aforesaid and that all and singular the said manors &c. shall remain continue and be subject unto and charged and chargeable with the payment of the said sum of £ and the interest thereof in manner aforesaid and according to the true intent and meaning of these presents *And* that free and discharged or otherwise by the said T. D. his heirs executors or administrators sufficiently indemnified from and against all estates incumbrances claims and demands whatsoever *And further* that the said T. D. or his heirs and all and every other person or persons who now are to claim or who shall or may have or claim any estate &c. shall and will from time to time and at all times hereafter upon every reasonable request to be made for that purpose but at the proper costs and charges in the law of the said T. D. or of such person or persons entitled &c. make do and execute or cause to be made done or executed all and every such further and other lawful or reasonable act or acts &c. for the better more perfect and absolute subjecting and charging the said several hereinbefore mentioned manors and premises and every of them and every part and parcel thereof to and with the payment of the said sum of £ and interest thereof and

No. XC.
To raise
Portions.

Covenant to
pay interest &c.

Covenants for
title.
Good right to
charge premises.

Free from in-
cumbrances.

For further as-
surance.

No. XC.
To raise
Portions.

every part thereof respectively and for the better limiting and appointing the said sum of £ and the interest thereof and every part thereof respectively as aforesaid to be paid to the said A. D. her executors administrators and assigns in manner hereinbefore mentioned according to the true intent and meaning of these presents *In witness &c.*

No. XCI.
Chaplain.

No. XCI.
Appointment of a Chaplain.

Liberty to have
chaplains.

Obs. By the 21 Hen. 8, c. 13, archbishops are authorized to have eight chaplains; dukes and bishops six; marquises and earls five; viscounts four; barons, knights of the garter, and lord chancellor, three; duchesses, &c. two; the treasurer and comptroller of the king's household, the king's secretary, the dean of the chapel, the king's almoner, and the master of the rolls, two; the chief justice of the King's Bench, and the warden of the Cinque Ports, one; each of whom may have a licence or dispensation to keep two benefices; but see now 1 & 2 Vict. c. 106. By 28 Hen. 8, c. 13, s. 2, the judges of the Queen's Bench, of the Common Pleas, the chancellor and chief baron of the Exchequer, the king's attorney and solicitor general, and by the 33 Hen. 8, c. 28, the chancellor of the duchy of Lancaster, &c. may each of them have one chaplain, having one benefice with each. And by these Acts, chaplains so appointed are exempted from residence, so long as they shall abide and dwell without any fraud, &c. or covin in any of the said honourable households. It is necessary, by 21 Hen. 8, c. 13, s. 22, that this appointment should be sealed as well as signed.

Stamp duty.

2. A stamp of 2*l*.

Know all Men by these Presents That I the Right Honorable &c. do by these presents nominate constitute and appoint the Reverend A. B. of &c. to be my domestic chaplain and to have hold and enjoy all and singular the benefits liberties privileges and advantages due and of right granted to the chaplains of nobility by the laws and statutes of the realm. *In witness &c.*

No. XCII.
Of a Chaplain
by a Bishop.

No. XCII.
Appointment of a Chaplain by a Bishop.

Know all &c. (see last precedent) That we by divine permission Bishop of for and in consideration of the learning

good life and sincere religion of our beloved in Christ A. B. clerk do &c. nominate &c. In testimony whereof we have put our seal which we use in this case to these presents and have subscribed the same this day of in the year of our Lord Christ and in the year of our translation &c.

No. XCII.
*Of Chaplain
by a Bishop.*

No. XCIII.

Appointment of a Parish Clerk.

No. XCIII.
*Of a Parish
Clerk.*

Obs. 1. By the common law and custom of the realm, incumbents have the right of nominating the clerk of the parish, *Gibs.* 214; unless where the parishioners claim the right by prescription of electing in open vestry, *Jermyn's case*, *Cro. Jac.* 670; see further 3 Burn, *Ecc. L.* Phillimore's ed. 82 *et seq.*

Right of ap-
pointment.

2. If under hand only, and the fees only amount to 50*l.*, no stamp appears to be necessary.

Know &c. (see *supra*, No. XCI.) That I (*appointor*) of &c. have nominated ordained and appointed and by &c. do nominate &c. to be the parish clerk of the parish church of &c. in the room stead and place of And the said office to have and execute by himself his deputy or deputies for and during the term of his natural life and during the same time to have perceive receive and take all such wages fees dues duties profits and emoluments as belong and are and shall be due to the said office and of right ought to belong to the same in as large and ample a manner as the said or any of his predecessors clerks of the said parish of have had or ought to have had as due and accustomed to the said parish clerk *In witness* &c.

No. XCIV.

Appointment of a Deputy Steward.

No. XCIV.
*Of a Deputy
Steward.*

Obs. As to the appointment of a deputy by another deputy, see *Pref.* sect. 13.

Know &c. That I (*appointor*) of &c. steward of the manor of in the county of by virtue of the power and authority given to me by C. D. of &c. lord of the said manor *Do* by these presents constitute and appoint E. F. of &c. my deputy or under-steward of the said manor during my pleasure Given under my hand and seal this day of 18

No. XCV.
Of a Game-
keeper.

No. XCV.

Appointment of a Gamekeeper.

Obs. 1. The 1 & 2 Will. 4, c. 32, by which the game laws are consolidated into one Act, provides, in s. 13, 14, that any lord of a manor may appoint, in writing, under his hand and seal, one or more person or persons as a gamekeeper or gamekeepers, to preserve and kill the game within the limits of such manor, for the use of such lord, and authorize such gamekeeper or gamekeepers to seize and take all dogs, nets, and other engines; and by s. 16 it is provided, that such appointments must be registered with the clerk of the peace for the county.

Stamp.

2. A stamp of 1l. 15s.

Know all Men by these Presents That I A. B. of &c. lord of the manor of in the county of do hereby nominate and appoint C. D. of &c. to be gamekeeper during my pleasure of and in my said manor and all the royalties rights members and appurtenants thereunto belonging and for my use to keep and preserve the game from time to time and to kill them for my use under my orders and directions and to take seize and detain all guns dogs ferrets nets snares wires and other engines whatsoever for the unlawful taking and destroying the said game found in or upon the said manor *And further* I do hereby give and grant unto him the said C. D. during my pleasure full power and authority to do all and every other lawful act which may be requisite and necessary for the preservation or pursuit of the said game. *In witness &c.*

Signed sealed and delivered being first }
duly stamped in the presence of }

A. B.

G. H.

APPOINTMENTS OF GUARDIANS.

- | | |
|--|--|
| 1. <i>Appointment of Guardians by Father.</i> | 3. <i>Appointment of Guardian by Infant.</i> |
| 2. <i>Only in case of legitimate Children.</i> | 4. <i>Stamp Duty on Appointment.</i> |

Appointment
of guardians by
father.

SECT. 1. The appointment of guardians in writing is made in two cases, namely, by the father or by the infant. By the 12 Car. 2, c. 24, the father, although under the age of twenty-one, may by deed or will,

attested by two witnesses, appoint who shall be the guardians of his children after his decease; and guardians so appointed are called testamentary guardians, whose appointment shall be effectual against all claiming as guardians in socage or otherwise, 2 Fonbl. Equit. 247, 5th ed. It is immaterial by what words the guardian is appointed, provided the father's intention is sufficiently apparent, Swinb. Pt. 3, c. 12. Of Guardians.

2. A father cannot by law appoint a guardian of children not born in wedlock, but the Court of Chancery will for the most part appoint the persons named in the father's will to be guardians, 2 Cox. Ca. 46. Only in case of legitimate children.

3. When an infant has no such property as attracts guardianship, and is destitute of any lawful guardian, by the appointment of the father or otherwise, he may at any age appoint such person as he may think proper to be the guardian of his estate and person. Also after the age of fourteen, when the custody of the guardian by socage terminates, the minor is at liberty, for want of a guardian by the father's appointment, to elect one for himself; and in some instances has been called upon by the Court of Chancery so to do, Fonbl. Eq. 235, 5th ed. Appointment of guardian by infant.

4. If the appointment be, as it usually is, under hand and seal, and delivered as a deed, the stamp of 35s. is chargeable upon it. Stamp.

—◆—
No. XCVI.

Appointment of a Guardian by Father.

No. XCVI.
By a Father.

Know all Men by these Presents That I A. B. of &c. do by these presents commit and dispose unto (*wife*) my wife the custody tuition and education of (*children*) my children from and after my decease until such of them as are sons shall attain the age of 21 and such of them as are daughters shall attain that age or marry And in case my said wife shall happen to die before me or after my decease should marry again before my said children should attain their respective ages of 21 or marry as aforesaid then and in such case I do commit and dispose unto G. D. such care and guardianship and beg of the said G. D. to take upon him such charge for the good of my said children
In witness &c.

—◆—

No. XCVII.
By an Infant.

No. XCVII.

Appointment of a Guardian by an Infant.

Obs. As to appointment by the infant, and the stamp, see *supra*, sects. 3, 4.

Know all Men by these Presents That I A. B. son and heir of A. B. of &c. deceased being of the age of fourteen years and upwards have elected nominated and appointed and by these presents do elect nominate and appoint E. F. of &c. guardian of my person and estate to do execute and perform during my minority all such acts matters and things whatsoever for me and on my behalf as a guardian may or ought to do And I do hereby promise to be ruled and governed by him in all things touching my welfare (a) *In witness &c.*

—◆—

*Appointment of a Protector of a Settlement, see post, FINES
AND RECOVERIES.*

—◆—

No. XCVIII.
Of a Receiver.

No. XCVIII.

Appointment of Receiver to secure Rents to Mortgagee.

Modes of ap-
pointing a
receiver.

Obs. 1. The appointment of a receiver, if made by deed, may either be by way of power of attorney or by way of demise to the receiver. The first, which is the more usual form, is frequently made in the mortgage deed under which the receiver is to act; but the more convenient mode is by a separate deed. Appointments by way of demise have this convenience, that they enable the receiver to distrain either before or after the decease of the party appointing.

Stamp.

2. A stamp of 1*l.* 15*s.*, and a further progressive duty of 10*s.* for every entire quantity of 1080 words over and above the first 1080.

Recital of mort-
gage in fee.

This Indenture made &c. Between (*mortgagor*) of &c. of the first part (*mortgagee*) of &c. of the second part and (*receiver*) of &c. of the third part *Whereas* by indenture bearing even date

(a) If it be necessary, add, “*And I do also hereby authorize and empower the said (guardian) to enter upon and take possession of all and every my mes- suages and tenements lands hereditaments and premises whatsoever situated lying and being in the county of or elsewhere and to let the same and take the rents and profits thereof during the term aforesaid And whatsoever he shall lawfully do in the premises I do hereby promise to confirm.*”

with these presents and made between the said (*mortgagor*) of the one part and the said (*mortgagee*) of the other part in consideration of the sum of £ paid to the said (*mortgagor*) by the said (*mortgagee*) he the said (*mortgagor*) did grant and confirm unto the said (*mortgagee*) and his heirs *All those &c. (parcels)* *To hold* the same unto and to the use of the said (*mortgagee*) his heirs and assigns for ever subject nevertheless to a proviso therein contained for the redemption of the said hereditaments and premises on payment by the said (*mortgagor*) his heirs executors administrators or assigns unto the said (*mortgagee*) his executors administrators and assigns of the sum of £ and interest for the same after the rate of £ per cent. on or at the days or times and in manner therein expressed and declared *And whereas* upon the treaty for the said loan it was agreed that so long as the said principal sum or any part thereof should remain upon the security of the said messuages farms lands and hereditaments comprised in the said in part recited indenture of release a receiver should be appointed upon the trusts and for the ends intents and purposes hereinafter expressed and that the said (*R.*) should be the receiver immediately appointed for that purpose *Now &c.* in pursuance &c. and in consideration of the premises he the said (*mortgagor*) with the consent and approbation of the said (*mortgagee*) testified by his being a party to and executing these presents *Doth* make constitute and appoint and in his place put and depute the said (*R.*) his receiver agent and true and lawful attorney in the name of the said (*mortgagor*) to ask demand collect and receive all and every the rents issues and profits of all and singular the said messuages farms lands tenements and hereditaments comprised in the said in part recited indenture of and from all and every person and persons liable to pay the same as and when the same shall from time to time become due and payable *And* in default of payment thereof or of any part thereof to take and use all such lawful means for recovering the said rents issues and profits or any of them or any part thereof by action suit distress entry or otherwise as shall be thought necessary *And* generally to do perform and execute all other acts matters or things needful and requisite for collecting and receiving the said rents and profits as fully and effectually to all intents and purposes as the said (*mortgagor*) could or might himself do if he were present *And* the said (*mortgagor*) doth hereby order and direct all and every the tenant and tenants and occupiers of the said messuages and tenements farms lands and here-

No. XCVIII.
Of a Receiver.

Agreement to
appoint receiver.

Power of attorney.

Direction to
tenants to pay
receiver.

No. XCVIII. ditaments and premises to pay unto the said (*R.*) or to his substitute or substitutes to be appointed as hereinafter mentioned all and singular the rents and profits and doth hereby declare that the receipt or receipts of him or them shall be good and sufficient discharges to such tenants and occupiers for such sums as shall be therein respectively acknowledged to have been received *And* it is hereby declared and agreed by and between the parties to these presents that the said (*R.*) shall stand and be possessed of the said rents issues and profits so reserved upon the trusts and to and for the ends and purposes hereinafter mentioned that is to say *Upon trust* that he the said (*R.*) shall from time to time out of the said rents and profits in the first place pay all taxes rates assessments and impositions whatsoever taxed charged assessed or imposed or to be taxed &c. on the said hereditaments or any of them or on the owners or occupiers thereof for or in respect thereof or any part thereof *And* in the next place to pay the said (*mortgagee*) his executors administrators or assigns all the interest which shall from time to time become due or payable for or in respect of the sum of £ or any part thereof on or at the days or times and in the manner in the said in part recited indenture of release mentioned and appointed for payment of the same *And upon further trust* by and out of the said rents issues and profits to retain and reimburse himself all costs charges and expenses which he shall have paid sustained or incurred in or about the execution of all or any of the trusts or powers hereby in him reposed together with the sum of £ per centum upon the gross rents which he the said (*R.*) shall have actually received as a compensation for his trouble in the execution of the same trusts *And* from and after the several payments the said (*R.*) do and shall from time to time pay the clear residue and surplus of the money which shall have come to his hands for or in respect of the said rents issues and profits unto the said (*mortgagor*) his heirs executors and administrators or such person or persons as he or they shall direct or appoint *And* the said (*mortgagor*) doth hereby for himself his heirs executors administrators and assigns covenant promise and agree with and to the said (*mortgagee*) his executors administrators and assigns by these presents in manner following that is to say That he the said (*mortgagor*) shall not nor will without the consent in writing of the said (*mortgagee*) his executors administrators or assigns first had and obtained revoke the powers and authorities hereby given to the said (*R.*) or any future receiver

No. XCVIII.
Of a Receiver.

Declaration of trusts.
To pay taxes.

To pay interest.

To reimburse himself.

To pay surplus to mortgagor.

Covenant by mortgagor not to revoke power;

or do or knowingly suffer to be done any act deed matter or thing whereby the said powers or authorities shall or may become void or of no effect or whereby the said (*R.*) shall or may be hindered or obstructed in collecting receiving or recovering all or any of the said rents issues or profits of the said hereditaments and premises and applying the same upon and for the trusts and purposes aforesaid during such time as the sum of £ or any part thereof shall remain and continue on the security hereinafore mentioned *And further* That in case the said (*R.*) shall by death or other disability be disqualified or rendered incapable to collect and receive the said rents and profits or shall refuse or neglect to proceed therein in manner aforesaid or shall otherwise misbehave himself in the trusts hereby in him reposed whilst the said sum of £ or any part thereof shall remain and continue on the aforesaid security then and in any of the cases aforesaid he the said (*mortgagor*) his heirs executors and administrators shall and will join with the said (*mortgagee*) his executors administrators and assigns in removing the said (*R.*) if then living from his employment and shall and will duly constitute and appoint such other fit person or persons in the place of the said (*R.*) as the said (*mortgagee*) his executors administrators or assigns shall nominate or approve to collect receive and pay the said rents and profits upon and for the trusts and purposes hereinbefore mentioned And so from time to time when and so often as the like case shall happen until the said sum of £ and all the interest for or in respect thereof shall be fully paid to the said (*mortgagee*) And in case the said (*mortgagor*) his heirs executors administrators or assigns or any of them shall refuse or neglect so to do for the space of three calendar months next after request shall have been made unto him or them in writing by the said (*mortgagee*) his executors administrators or assigns for that purpose then and in such case and as often as the same shall happen it shall be lawful for him the said (*mortgagee*) his executors administrators or assigns without the consent or concurrence of the said (*mortgagor*) his heirs executors administrators or assigns to constitute and appoint some fit person to collect receive and pay the said rents and profits upon the trusts and for the purposes aforesaid with such salary or emolument for his care and trouble as he the said (*mortgagee*) his executors administrators or assigns shall think fit not exceeding one shilling in the pound on the gross rental for the time being *Provided always* and it is hereby declared and agreed that the said (*mortgagee*) his

No. XCVIII.
Of a Receiver.

and to join in
appointing another
receiver.

In case of neglect mortgagee
to appoint.

Clause of indemnity.

No. XCVIII.
Of a Receiver.

Mortgagee not to be answerable for losses occasioned by receiver.

Covenant from mortgagee that mortgagor may receive rents and profits until default.

Covenant from receiver that he will faithfully collect and pay rents &c.

executors administrators or assigns shall not in any case be charged or chargeable with or answerable for any loss misapplication or nonapplication of the rents issues and profits of the said messuages tenements farms lands and hereditaments or any part thereof by reason of any default neglect or breach of trust of the said (R.) or any future receiver so to be appointed as aforesaid but that such loss misapplication or nonapplication as also the salary of the said (R.) shall be wholly borne by the said (mortgagor) his heirs executors administrators and assigns *Provided also* and it is hereby further declared and agreed by the parties to these presents that until the interest on the said sum of £ shall be in arrear and unpaid by the space of calendar months next after the same shall have become due all and singular the rents issues and profits of the said messuages and tenements farms lands hereditaments and premises shall and may be paid and retained by the said (mortgagor) his heirs and assigns to and for his and their own proper use and benefit and that until that time the said (R.) and any future receiver shall not act under or exercise any of the powers and authorities given unto him as aforesaid anything herein contained to the contrary notwithstanding And the said (R.) doth hereby for himself his heirs executors and administrators covenant promise and agree with and to the said (mortgagee) and also with and to the said (mortgagor) that he the said (R.) shall and will from time to time so long as he shall be and continue the collector and receiver of the said rents issues and profits use his utmost endeavours faithfully to collect and receive the same and shall and will truly and punctually pay and apply all such sums of money as shall from time to time be collected and received by him the said (R.) by virtue of and under the aforesaid power and authority according to the trusts hereby in him reposed *In witness &c.*

No. XCIX.

No. XCIX.
Of a Steward of a Manor.

May be by parol.

Appointment of a Steward of a Manor.

Obs. The appointment of a steward by the lord or lady of a manor solely seised of the manor, if notified by parol, is as effectual in all points as if made by deed; but a patent is necessary for making stewards to the king's or queen's manors; and a patent or deed in the

case of a corporation aggregate, Co. Cop. s. 45; 4 Co. 26; Co. Litt. 61 b, Gilb. Ten. 221.

No. XCIX.
*Of a Steward of
a Manor.*

Know all Men by these Presents That I (*lord or lady*) have given and granted and by these presents do give and grant unto (*steward*) of &c. gentleman the office of steward of my manor of in the county of And I have constituted and appointed and do constitute &c. him the said (*S.*) steward of the said manor to keep and hold all courts belonging to the said manor at the usual times the same have been accustomedly holden and at such other times as he the said (*S.*) shall think fit and expedient *To have* hold and enjoy the said office of steward and to take and receive all and singular the fees and profits thereto belonging by him the said (*S.*) or his sufficient deputy during my will and pleasure (*or* “during the will and pleasure of me my heirs and assigns” *or* “during the life of the said steward” *as the case may be*) *In witness &c.*

No. C.

Appointment of New Trustees by Virtue of a Power in a Settlement.

No. C.
Of Trustees.

Obs. 1. By the 13 & 14 Vict. c. 60, the Lord Chancellor is empowered to convey estates vested in lunatic trustees and mortgagees, and the Court of Chancery is empowered to convey estates vested in trustees out of the jurisdiction of the court, and also estates which shall have been vested in two or more trustees jointly, when it shall be uncertain which of such trustees was the survivor; and also estates when it shall not be known whether the last trustee was living or dead, and estates of which the last trustee shall have died intestate and without an heir, or shall have and it shall not be known who is his heir or devisee; and also estates the trustee of which shall refuse to convey:—in all such cases the Lord Chancellor or the Court of Chancery are enabled either to make an order having the effect of a conveyance, or to appoint a person to convey. The Court of Chancery is, by sect. 32 of the same act, empowered to appoint new trustees, and to vest the lands, subject to the trust, in the new trustees.

Appointment by
Court of Chan-
cery.

2. A common deed stamp of 1*l.* 15*s.* and a progressive duty of 10*s.* Stamp. for every 1080 words above the first 1080.

This Indenture &c. Between (*Old Trustees*) of &c. of the first part (*Husband*) of &c. and M. his wife of the second part and (*New Trustee*) of &c. of the third part *Whereas* by indenture of

Recital of deed
of settlement
creating the
power.

No. C.
Of Trustees.

assignment and release bearing date the day of 18
grounded on a lease for a year and made or expressed to be
made between &c. and purporting to be a settlement made pre-
viously to the marriage then in contemplation and which soon
after took effect between the said (*husband and wife*) certain
freehold lands tenements and hereditaments therein particularly
described were conveyed and assured to the said (*O. T.*) their
heirs and assigns upon the trusts therein declared concerning the
same and by the same indenture certain leasehold hereditaments
therein mentioned were assigned to the said (*O. T.*) their executors
administrators and assigns for the residue of a term of 99 years
upon the trusts therein declared concerning the same And by the
same indenture it was declared that in case the said (*O. T.*) or any
of them should die or be desirous to be discharged from the trusts
thereby in them reposed or should refuse or be incapable to act
in the said trusts it should and might be lawful to and for the
said (*O. T.*) or the survivors or survivor of them by and with the
consent of the said (*H.*) and M. his wife or the survivor of them
testified in writing under their hand and seals to nominate and
appoint one or more new trustee or trustees in the room of such
trustee or trustees so dying or desiring to be discharged from or
neglecting or refusing to act in the said trusts and that the retiring
trustees or trustee as aforesaid should do such acts deeds matters
or things as should be necessary for transferring and vesting the
trust premises respectively in such new trustee or trustees so as
that the same should and might be legally and effectually vested
in such new trustee or trustees And that he or they should and
might act in the execution of the said trusts as fully and effec-
tually in all respects as if he or they had been originally nomi-
nated and appointed *And whereas* the said (*O. T.*) are desirous
to give up and be discharged from the trusts reposed in them by
the said in part recited indenture *And whereas* the said (*O. T.*)
at the request of the said (*H.*) and M. his wife and on the ac-
ceptance of the said (*N. T.*) have agreed to appoint them the
said (*N. T.*) in the place and stead of the said (*O. T.*) in the
manner hereinafter mentioned *Now this Indenture witnesseth*
that in and by virtue and in exercise of the power and authority
for that purpose in and by the said in part recited indenture given
and reserved they the said (*O. T.*) by and with the consent and
approbation of the said (*H.*) and M. his wife testified by their
being parties to and signing and sealing these presents do nomi-
nate and appoint the said (*N. T.*) to be trustees in the room and

No C.
Of Trustees.

stead of the said (*O. T.*) to act in the trusts mentioned and declared in and by the hereinbefore recited indenture of settlement *And this Indenture also witnesseth* that in obedience to the said directions they the said (*O. T.*) do hereby grant and convey unto the said (*N. T.*) and their heirs all and singular the freehold lands tenements hereditaments and premises comprised in and conveyed by the said indenture of as hereinbefore is mentioned with their rights easements and appurtenants and all the estate right title and interest of them the said (*O. T.*) of in to out of or upon the same premises *To Hold* the same premises unto the said (*N. T.*) and their heirs to the use of the said (*N. T.*) and their heirs upon the trusts and with the powers upon and with which the same ought to be held by virtue of the said indenture of *And this Indenture also witnesseth* that in further obedience to the said directions they the said (*O. T.*) do hereby assign unto the said (*N. T.*) and their heirs all and singular the leasehold lands tenements hereditaments and premises comprised in and assigned by the said indenture of as hereinbefore is mentioned and all the estate right title and interest of them the said (*O. T.*) of in to out of or upon the same premises *To Hold* the same premises unto the said (*O. T.*) their executors administrators and assigns for the residue of the said term of 99 years upon the trusts and with the powers upon and with which the same ought to be held by virtue of the said indenture of And each of them the said (*O. T.*) so far as relates to his own acts and deeds doth hereby for himself his heirs executors and administrators covenant with the said (*N. T.*) their heirs executors administrators and assigns that they the said (*O. T.*) respectively have not made or done or knowingly permitted or suffered any act deed matter or thing whereby the premises hereinbefore granted and assigned respectively or any part thereof are is can shall or may be impeached charged affected or incumbered in title estate or otherwise howsoever or whereby the said (*O. T.*) are in anywise prevented from granting or assigning the same premises respectively in manner aforesaid according to the true intent and meaning of these presents *In witness &c.*

APPORTIONMENT.

- | | |
|---|--|
| 1. <i>Definition and Application of Apportionment.</i>
2. <i>Apportionment of Rents.</i>
3. <i>Apportionment of Contracts.</i>
4. <i>Apportionment of Conditions and Covenants.</i>
5. <i>Apportionment of Commons.</i> | 6. <i>Apportionment of Annuities and Dividends.</i>
<i>Other periodical Sums.</i>
<i>Maintenance apportionable.</i>
<i>Interest on a Mortgage not so.</i>
<i>Policies of Insurance not so.</i> |
|---|--|

Definition and application of apportionment.

SECT. 1. Apportionment, or setting apart or dividing into set portions for particular purposes, is applicable to several matters in law,—as to rents, contracts, conditions, covenants, commons, annuities, dividends, mortgages and other payments, at stated periods. Some of these things are apportionable by act of law, if not by the act of the party; some, as interest on mortgages and sums payable on policies of insurance, are not apportionable at all; others, as annuities, &c., are apportionable, not at common law, but by statute, see further, *infra*.

Apportionment of rents.

2. Apportionment of rent is in two ways: First, in respect to the parties entitled to receive or bound to pay the rent. Secondly, as to the particular portion of time for which rent is payable after the death of a party or otherwise.

By the old rule of law, where a tenant for life granted a lease for years payable half-yearly, and died in the interval before any half-yearly payment became due, his executors and administrators were not entitled to the rent coming due, but it fell into the land. By the 11 Geo. 2, c. 19, s. 15, it is provided that where any tenant for life dies before or on the day on which any rent is reserved upon any demise which determines at the death of such tenant, his executors or administrators may recover the whole, or, if before the day, a proportion of such rent, according to the time the tenant lived of the last year, half-year, quarter or other time in which the rent was growing due. Under this statute it was held that the representatives of a tenant in tail were entitled to apportionment; but whether a tenant *pur autre vie* was within the statute appears not to have been settled. But now by the 4 & 5 Will. 4, c. 22, amending and extending the former act, rents reserved on leases determining on the death of the person making them, although not strictly tenant for life, or on the death of tenant *pur autre vie*, are to be apportionable according to the provisions of that act.

By the second section of the 4 & 5 Will. 4, all rents service reserved on any lease by a tenant in fee or for any life interest, and all rents, annuities and other payments, coming due at fixed periods under any

instrument executed after the passing of the act, should be apportioned so that on the death of any person interested in such rents, or the determination of the interest of such person, he or she, or his or her executors, administrators or assigns, shall be entitled to a proportion of such rents. Notwithstanding the express words of this statute, it has been held that the statute only applies to cases in which the interest of the person interested in such rents or payments is terminated by his death, or by the death of another person; but does not apply to the case of a tenant in fee, or provide for the apportionment of rent between the real and personal representative of such person whose interest is not terminated at his death, *Brownne v. Amyot*, 3 Hare, 173; 8 Jur. 568. Contrary to the apparent intention of the legislature, this act has been held to apply to Scotland, but it is understood that the Scotch judges have come to a decision contrary to that in *Brownne v. Amyot*.

Apportionment.

3. As a rule, where a contract is entire, it cannot be split, 3 Vin. Abridg. tit. APPORTIONMENT; therefore, where a party agrees to deliver a certain quantity of goods within a certain time, he cannot bring an action for the amount of any part, but must wait until the whole is delivered, *Waddington v. Oliver*, 2 N. R. 61, unless the buyer consents to keep the part, when the value thereof may be ascertained, *Shipton v. Casson*, 5 B. & C. 378, recognized in *Oxen-dale v. Wetherell*, 9 B. & C. 386. So where a party engages to do a specific work for a specific sum, he must complete the work before he can recover the sum agreed on, *Sinclair v. Bowles*, 9 B. & C. 92; but where a shipwright enters into a general engagement to repair a ship, he may, on having done a part, refuse to proceed until he is paid for the part completed, *Roberts v. Havelock*, 3 B. & Ad. 404, distinguishing this from the preceding case; so formerly, where a party agreed with a builder to build a house according to a given plan, and deviations were afterwards made, such deviations formerly invalidated the whole contract, and enabled the builder to make his own charges, without regard to any contract; but now he can in such case recover only on a *quantum meruit* in respect of the deviations; so formerly shipowners were liable to the full extent of any loss or damage; but now by several statutes the liability is limited to the value of the ship and the amount of the freight; and where there are several sufferers, the compensation to them is proportioned to their several losses. Seamen's wages are not apportionable.

Apportionment
of contracts.

4. Conditions, being entire, are for the most part not apportionable except where they are so by act of law, see *post*, LEASES; so also as to covenants for title or covenants in leases, see *post*, LEASES.

Apportionment
of conditions
and covenants.

5. If a man purchase part of the land, wherein common appendant is to be had, the common shall be apportioned, because it is of common right, Hob. 235; *Tyrringham's case*, 4 Co. 37; *sed secus* as to

Apportionment
of commons.

Apportionment.

common appurtenant or any other common whatsoever, 1 Inst. 122 a.

Apportionment
of annuities &c.

6. By sect. 2 of the above mentioned act, 4 & 5 Will. 4, c. 22, its provisions are extended to all rents, annuities, and other sums coming due at fixed periods, which are to be apportioned in like manner. This was doubtless intended to apply to every case where an annual sum determines on the death of the person interested, whether grantor or grantee; but as it is not stated in express terms, it may be prudent to insert the usual stipulation in an annuity deed.

Other periodical
sums.Maintenance
&c. apportion-
able.Interest on a
mortgage.Policies of as-
surance.

Although before this act, there were several periodical payments which were not apportionable, yet the case of maintenance for infants was excepted, and it was held in that case that a party was entitled to a proportional part of his annuity for the time between the last half-yearly day of payment and his attaining twenty-one, *Weigall, v. Brome*, 6 Sim. 99; so interest on mortgages was held to be apportionable; but that was rather because interest on a mortgage is in fact due from day to day, and therefore not properly a periodical payment, *Edwards v. Warwick (Countess)*, 2 P. Wms. 276.

By sect. 3 of the 4 & 5 Will. 4, c. 22, annual sums due on policies of assurance are not to be apportioned.

No. CI.
*Of Annuity.*No. CI.
Apportionment of Annuity.

And in case the said (*grantor or grantee as the case may be*) should die in the interval between any of the said quarterly days of payment then also a proportionate part of the said annuity for the time which at the decease of the said (*grantor*) shall have elapsed of the quarterly payment growing due.

APPRENTICESHIP.

1. *Definition of an Apprentice.*
2. *Statutory Provisions as to Apprentices.*
Qualification to be an Apprentice.
3. *Articles of Apprenticeship by Indenture.*
By Deed.

4. *Inrolment of Indentures.*
5. *Stamp Duty on Indentures.*
Exemption of Parish Indentures.
Premium actually paid.
6. *Infant cannot bind himself.*
7. *Apprenticeship how assignable.*

Definition of an
apprentice.

SECT. 1. The word apprentice, from *apprendre*, to learn, signifies a learner of a trade; therefore, the covenant by the master to teach

the other a trade, and the latter was to do nothing ulterior to the employment in that trade, was held by Lord Ellenborough to be a contract *apprendre*; in the true sense of the word, it constituted an apprenticeship within the meaning of the legislative expression, *R. v. Inhabitants of Rainham*, 1 E. 531; Chit. on App. 24. Apprenticeship.

2. By the 5 Eliz. c. 4, all persons were prohibited from following any trade, who had not served an apprenticeship of seven years; but this and other regulations respecting the qualifications of persons entitled to take and become apprentices, &c., have since been repealed; first, by the 12 Ann. st. 2, c. 3, s. 9, as to distillers of brandy from British malt; by the 17 Geo. 3, c. 55, s. 5, as to hatters and felt-makers; and generally by the 54 Geo. 3, c. 96, which enacts that any person may take or become an apprentice, although not according to the provisions of the 5 Eliz. c. 4. Other statutes have likewise been passed relative to apprentices to particular trades and professions. The 42 Geo. 3, c. 73; 1 & 2 Will. 4, c. 39; 3 & 4 Will. 4, c. 103, contain many regulations for the purpose of preserving the health and morals of the children put apprentices to the cotton and other manufactories. The 43 Eliz. c. 2 (amended by 32 Geo. 3, c. 5), and still more by 56 Geo. 3, c. 139, contains several provisions as to the binding out or assigning over parish apprentices to businesses in general; the 4 & 5 Will. 4, c. 35, repealed and re-enacted with amendments by 3 & 4 Vict. c. 85, applies to apprentices put out to chimney-sweepers; and 5 & 6 Will. 4, c. 19, to apprentices put out to the sea service. By the 55 Geo. 3, c. 194, and 6 Geo. 4, c. 133, no person shall be admitted to any examination for a certificate of his qualification to act or practise as an apothecary, unless he shall produce proof to the court of examiners of his having served an apprenticeship of not less than five years to an apothecary, or to a member of the Royal College of Surgeons in London, Edinburgh or Dublin, or to a Surgeon in his Majesty's army or navy. As to articles of Clerkship, see *post*. Statutory provisions as to apprentices.

3. One cannot be bound an apprentice without deed, 1 Salk. 68. By the 5 Eliz. c. 5, articles of apprenticeship are required to be indented, in the case of apprentices to husbandry, to owners of ships, fishers on the seas, &c.; and by the 43 Eliz. c. 2, also, in the case of apprentices put out by the parish; by the 54 Geo. 3, c. 46, indentures made according to the provisions of 5 Eliz. c. 4, which are otherwise valid, are to be so, notwithstanding the repeal of that statute. Although the 31 Geo. 2, c. 11, s. 2, has dispensed with the necessity of having the deed indented, it is still necessary that the binding should be by deed, *R. v. Inhabitants of Ditchingham*, 4 T. R. 769.. By the 8 Ann. c. 9, s. 35, indentures must bear date the day they are executed. Qualification to be an apothecary.

Articles of apprenticeship by indenture.

By deed.

Apprenticeship.

Inrolment of indentures.

4. In London, and some other places, the indentures must be inrolled before the chamberlain within a year, and the apprentice must be present at the inrolment and acknowledge them, *Bac. Abr. Mast. and Ser. A.*; 1 Mod. 271.

Stamp duty on indentures.

5. By the 55 Geo. 3, c. 184, indentures of apprenticeship must be impressed with the following stamp duties. If the premium be under 30*l.*, 1*l.*; if 30*l.* and under 50*l.*, 2*l.*; if 50*l.* and under 100*l.*, 3*l.*; if 100*l.* and under 200*l.*, 6*l.*; if 200*l.* and under 300*l.*, 12*l.*; if 300*l.* and under 400*l.*, 20*l.*; if 400*l.* and under 500*l.*, 25*l.*; if 500*l.* and under 600*l.*, 30*l.*; if 600*l.* and under 800*l.*, 40*l.*; if 800*l.* and under 1000*l.*, 50*l.*; if 1000*l.* and upwards, 60*l.*; and where there is no premium, and the instrument contains no more than 1080 words, 1*l.*; and if above that number of words, 1*l.* 15*s.* By the 13 & 14 Vict. c. 97, a progressive duty of 10*s.* is imposed for every entire quantity of 1080 words above the first 1080 words, with a proviso that no higher amount of progressive duty should be charged than was payable before the passing of the last mentioned act. A duplicate is chargeable with a duty of 5*s.*, and a progressive stamp of 2*s.* 6*d.* for every entire quantity of 1080 words after the first 1080 words.

Exemption of parish indentures.

Indentures for placing out poor children apprentices are exempt from all stamp duties. This exemption has been held not to be confined to mere compulsory bindings under the 42 Eliz. c. 2, but extends to voluntary bindings, provided the premium is paid out of a fund raised at the public charge, *R. v. St. Petrox*, 4 T. R. 196; so indentures for placing out poor children at the charge of any public charity are by the same act exempt from stamp duty; and it has been held that where a poor person was bound apprentice at the charge of a fund bequeathed to trustees for that purpose, it was not necessary that the trustees should be parties to the indentures, *R. v. Quainton*, 2 M. & S. 338; and a private agreement without the knowledge of the trustees between the master and a third person, whereby the latter agreed to pay for the clothing and washing of the apprentice, was held not to subject the indenture to the stamp duty. But the fund must be derived from a public and not a private charity, to bring it within the exemption, *R. v. St. Matthew (Bethnal Green)*, Bur. S. C. 574; S. C. 1 Const. 661; see also *R. v. Clifton*, Bur. S. C. 697; *R. v. Takenham*, 2 Ad. & E. 528; S. C. 4 Nev. & Man. 553.

Premium actually paid.

The premium actually paid must, by the 8 Ann. c. 9, s. 39; 20 Geo. 2, c. 45, be truly set forth in the indenture, or otherwise it is void, *Jackson v. Warwick*, 7 T. R. 121; but if the sum paid be less than that inserted, this will not vitiate the articles, *R. v. Inhabitants of Kensham*, 5 E. 309. But no indenture will, by 8 Anne, c. 9, s. 43, be admitted in evidence unless the party producing the same make

oath that the sum inserted therein was all that was given or contracted for. Apprenticeship.

6. At common law, no person under the age of twenty-one can bind himself, for an infant can be bound by no covenant, except by the custom of London, where an infant above the age of fourteen may bind himself to a freeman, and it shall be as binding as if he were of full age, 2 Roll. Abr. 305; 1 Mod. 271. An apprentice is considered as freed from all liability to serve after he comes of age; but as those who engage for the infant are held to be bound by the covenants, care must be taken that the period expire at or before the apprentice attains the age of twenty-one, *Ex parte Davis*, 5 T. R. 715; *Cuming v. Hill*, 3 B. & A. 59. The apprentice must be a party to the indenture, although put out by the parent, 2 Salk. 479.

Infant cannot bind himself.

7. An apprenticeship is not assignable without the consent of the apprentice, Hob. 134; *Peck's Case*, 1 Salk. 66. By the custom of London, the executors of the master are bound, in case of his death, to place the apprentice with another master, *Peck's Case*, *ub. sup.* In cases where a master dies shortly after an apprentice has been bound to him, a court of equity will decree that a larger sum shall be refunded than has been agreed to, 1 Vern. 460; and where a master becomes bankrupt it will decree, that a proportion of the premium shall be considered as a debt, and proveable under the commission, although there be no agreement to that effect, Chit. 85; *Ex parte Sandby*, 1 Atk. 149. A master is entitled to the whole of the time of the apprentice, unless it be otherwise covenanted, *Thompson v. Havelock*, 1 Camp. 527.

Apprenticeship how assignable.

No. CII.

Indentures of Apprenticeship.

No. CII.

Indentures.

This (a) Indenture made the day (b) of in the year of our Lord Between (Father) of &c. of the one part (c) (Apprentice) son of the said (F.) of the second part and (Master) of &c. of the third part Witnesseth That in consideration of the (d) sum of £ to the said (M.) in hand &c. paid the receipt whereof &c. he doth hereby admit and acknowledge he the said (M.) doth for himself his executors and administrators covenant promise and agree with and to the said (F.) to accept the said

Master covenants to teach.

(a) When a deed indented is necessary, see *ante*, Pref. sect. 3.

(b) Respecting the date, *ib.*

(c) As to apprentice being a party, see *ante*, Pref. sect. 6.

(d) As to the stamp duty, see *ante*, Pref. sect. 5.

No. CII. <i>Indentures of.</i>	(A.) as his apprentice during the term of years in manner as follows That he the said (M.) shall and will according to the best of his power skill and knowledge (a) teach the said (A.) in the trade or business of [or "profession of "] and
And give board &c.	all and every thing relating thereto <i>And also</i> shall and will during the said term find and provide the said (A.) with good and sufficient diet lodging and washing fit for an apprentice (b) <i>And</i> the said (F.) and the said (A.) for themselves severally and for their several executors and administrators do and each of them doth covenant promise and agree with and to the said (M.) That the said (A.) from the date hereof during the term of years shall and will truly and faithfully serve the said (M.) as his apprentice and diligently attend to the said business at all times his secrets keep and his lawful commands willingly obey And shall not nor will absent himself from his master's service without the leave of the said (M.) nor do nor knowingly suffer any damage to be done to the goods monies or other things which shall be delivered or put into his custody or care <i>And</i> shall not embezzle waste or lend them to any one without his master's consent nor play at cards or other unlawful games nor haunt or frequent taverns but in all things shall and will demean and behave himself towards his master as a good and faithful apprentice ought (c) <i>And</i> the said (F.) doth hereby further agree that he shall and will at all times during the said term provide the said (A.) with suitable clothes both linen and woollen and all other necessaries except board washing and lodging (d) <i>And</i> it is hereby declared and agreed by and between the parties hereto That in case the said (M.) shall happen to die in the first or second year from the date hereof the executors and administrators of the said (M.) shall pay the sum of £ out of the said sum of £ And lastly for the true performance &c. (Penal clause, see <i>ante</i> , AGREEMENT for building a House.)
Father agrees to find clothes.	
In case of master's death part of the fee to be repaid.	

(a) Force of this word, see *ante*, Pref. sect. 1.

(b) If the apprenticeship be to a profession, as a surgeon, say, "And moreover shall and will permit and allow the said (A.) to walk or attend on days in the week or oftener if needful the hospital of at or attend any other lectures upon medicine surgery &c." As to the medical profession, see *ante* Pref. sect. 2.

(c) As to this clause, see *ante*, Pref. sect. 6.

(d) As to the death of the master, and how much of the premium must be refunded, see *ante*, Pref. sect. 7.

CLERKSHIP TO AN ATTORNEY.

- | | |
|--|-----------------------------------|
| 1. <i>Qualification to be an Articled Clerk.</i> | 2. <i>Inrolment of Articles.</i> |
| | 3. <i>Stamp Duty on Articles.</i> |

SECT. 1. By the 2 Geo. 2, c. 23, no person shall act as an attorney until he has served a clerkship of five years to the profession; and by the 22 Geo. 2, c. 46, he must continue and be actually employed by such attorney or solicitor. If therefore he served but a small portion of his time with another attorney or solicitor (not being regularly assigned to him), it has been held not to be a sufficient serving under articles, 7 T. R. 456; unless that attorney be the agent of the master, and then by a rule of Court of King's Bench, Tr. 31 Geo. 3, he is permitted to serve him one year and no longer, 4 T. R. 379. By the 1 & 2 Geo. 4, c. 48, a person who has taken his degree at either Oxford, Cambridge or Dublin, is required to be articled for only three years instead of five. By 3 Geo. 4, c. 16, if a clerk, who is articled for five years, attend during that time a practising barrister or certificated special pleader for one year, it shall be deemed a part of his service.

Qualification to be an articled clerk.

Effect of taking a degree.

2. By the 34 Geo. 3, c. 14, articles of clerkship must be inrolled within six months after the date, with the affidavit of the due execution at the same time. See further, as to articles of clerkship, AFFIDAVITS.

Affidavit of execution.

3. The stamp on articles of clerkship is 120*l.*, and on the counter-part 5*l.*, with 2*s.* 6*d.* for every 1080 words above the first 1080 words.

Stamp duty on articles.

No. CIII.

Articles of Clerkship.

No. CIII.
Articles of Clerkship.

Articles of Agreement &c. Between (*Master*) of &c. gentleman one of the attornies of her Majesty's Courts of Queen's Bench and Common Pleas at Westminster and solicitor in the High Court of Chancery of the one part and (*Father*) of &c. and (*Clerk*) son of the said (*F.*) of the other part *Witness* That the said (*C.*) of his own free will and by and with the consent and approbation of the said (*F.*) his father *Doth* by these presents put place and bind himself clerk to the said (*M.*) to serve him from the day of the date hereof for and during and until the full end and term of five years from hence next ensuing and fully to be complete and ended *And* the said (*F.*) doth for himself his

Clerk covenants to serve.

No. CIII.
*Articles of
Clerkship.*

Not to destroy
books or papers.

Father to make
good any da-
mage.

Master cove-
nants to take
clerk.

executors and administrators covenant promise and agree with and to the said (*M.*) his executors administrators and assigns in manner following that is to say That the said (*C.*) shall and will well and faithfully serve the said (*M.*) as his clerk in the profession of an attorney at law and solicitor in Chancery from the day of the date hereof for and during the said term of five years and that he the said (*C.*) shall not at any time during the said term of five years cancel obliterate spoil destroy waste embezzle spend or make away with any of the books papers writings monies stamps or other property of the said (*M.*) his executors administrators or assigns or any of his clients or employers which shall be deposited in his hands or intrusted to his custody or possession or to the care custody or possession of the said (*C.*) and that in case the said (*C.*) shall act contrary to the last mentioned covenant or if he the said (*M.*) his executors administrators or assigns shall sustain or suffer any loss damage or prejudice by the misbehaviour or neglect of the said (*C.*) he the said (*F.*) his executors or administrators shall make good and reimburse him the said (*M.*) the amount and value thereof *And further* that he the said (*C.*) shall and will from time to time and at all times during the said term of five years keep the secrets of the said (*M.*) and readily and cheerfully obey and execute his lawful and reasonable commands and shall not depart or absent himself from the service or employ of the said (*M.*) during the said term without his consent first obtained but shall from time to time and at all times during the said term conduct himself with all due diligence honesty sobriety and temperence *And* that he the said (*F.*) his executors and administrators shall and will at all times during the said term at his and their proper costs and charges find and provide the said (*C.*) with all and all manner of necessary and becoming apparel and washing and also physic and medical advice and nursing in case of sickness *And* the said (*C.*) doth hereby for himself and on his part consent and agree to and with the said (*M.*) his executors administrators and assigns that he the said (*C.*) shall and will truly and honestly serve the said (*M.*) at all times for and during the said term as a faithful clerk ought to do in all things whatsoever in the manner above specified *In consideration* whereof and of the sum of £ of lawful &c. by the said (*F.*) to the said (*M.*) in hand &c. he the said (*M.*) for himself his heirs executors and administrators doth hereby covenant promise and agree with and to the said (*F.*) *That* he the said (*M.*) shall and will accept and

take the said (C.) as his clerk and find *and provide him with board and lodging* And also shall and will instruct the said (C.) in the knowledge and practice of the law in the Courts at Westminster as an attorney and solicitor in such manner as he the said (M.) now practises and professes the same *And also shall and will at the expiration of the said term use his best endeavours at the request costs and charges of the said (F.) and (C.) or either of them to cause and procure him the said (C.) to be admitted and sworn an attorney of her Majesty's said Courts of Queen's Bench and Common Pleas or either of them or any other of her Majesty's courts of law or equity provided he the said (C.) shall have well and faithfully served his said intended clerkship In witness &c.*

No. CIII.
Articles of Clerkship.

To provide him with board, lodging and instruction.

To procure his admittance as an attorney, at the expiration of the clerkship.

No. CIV.

Assignment of an Apprenticeship.

No. CIV.
Assignment, (Apprentice).

- | | |
|---|-------------------------------------|
| 1. <i>How assignable.</i> | 3. <i>Stamp duty on Assignment.</i> |
| 2. <i>What necessary on Assignment.</i> | |

SECT. 1. An apprenticeship, being a personal trust, is not assignable at common law at the will of the master, *Coventry v. Woodhall*, Hob. 134; therefore an award that an apprentice should be assigned has been held to be void, *Horne v. Blake*, 2 Str. 1267; see further *ante*, Pref. sect. 7.

How assignable.

2. By the custom of London, an apprentice, when he is assigned over, must attend at the Chamberlain's Office, and the master must take his freedom with him. If the assignment is not passed at the office, it is void. ~~If~~ an apprentice be assigned by the representative of a deceased master, probate of administration must be produced.

What necessary on assignment.

3. The 55 Geo. 3, c. 184, imposes the same *ad valorem* duty on the assignment of an apprentice (not turned over by the parish), where there shall be a valuable consideration given, as was charged on the original indenture; where there is no consideration, the usual stamp of 1*l.*, or if the indenture contain more than 1080 words, 1*l.* 15*s.* By the act 13 & 14 Vict. c. 97, the progressive duty is reduced to 10*s.* for every entire quantity of 1080 words above the first 1080 words, with a proviso that a higher rate of progressive duty than under the old law shall not be charged. Where there are two parts, the duplicate requires a stamp of 5*s.*, and a progressive duty of 2*s.* 6*d.* for every entire 1080 words beyond the first 1080 words. The duplicate must have a denoting stamp. The part bearing the *ad*

Stamp duty on assignment.

No. CIV.
Assignment,
(Apprentice).

valorem duty to be kept by the former master or mistress, or the apprentice, and the counterpart by the new master or mistress. An agreement to assign an apprentice from one master to another must, by 23 Geo. 3, c. 58, be stamped as an agreement, *R. v. St. Paul's, Bedford*, 6 T. R. 452.

Recital of in-
denture of
apprenticeship.

Of agreement
to assign ap-
prentice.

Assignment.

This Indenture made &c. Between (*master*) of &c. and (*ap-
prentice*) of the one part and (*new master*) of &c. of the other
part *Whereas* (*A.*) son of A. B. of &c. by indenture bearing
date &c. and made between &c. was duly bound to the said (*M.*)
for the term of years commencing from the date thereof as
by the said indenture will more fully appear *And whereas* it
hath been agreed that the said (*A.*) shall serve out the remainder
of his term of apprenticeship with the said (*N. M.*) and be by
him fully taught and instructed in the trade business and manual
occupation of and the said (*M.*) hath thereupon agreed to
assign the said (*A.*) as hereinafter is mentioned *Now* &c. in
consideration of the agreement and other good causes and con-
siderations him the said (*M.*) thereunto moving He the said (*M.*)
doth by these presents grant assign and set over unto the said
(*N. M.*) *All* such right title duty term of years yet to come and
unexpired service and demand whatsoever which he the said
(*M.*) hath in or to the said (*A.*) by virtue of the said indenture
of apprenticeship or otherwise *To have and to Hold* all such
right title duty term of years yet to come and unexpired service
and demand whatsoever hereby assigned unto the said (*N. M.*)
his executors administrators and assigns from henceforth for and
during all the residue and remainder yet to come and unexpired
of the said apprenticeship or term of years as aforesaid in
as ample and beneficial a manner as he the said (*M.*) might or
could have had or enjoyed the same if these presents had not
been made Under and subject nevertheless to the covenants
and agreements in the said in part recited indenture on the part
and behalf of the said (*N. M.*) to be done and performed *And*
the said (*N. M.*) for himself &c. hereby covenants &c. that he the
said (*N. M.*) his executors &c. shall and will well and truly
observe perform fulfil and keep the covenants and agreements in
the said in part recited indenture of apprenticeship on the part
and behalf of the said (*M.*) to be done and performed *And* the
said (*A.*) Doth hereby covenant with and to the said (*N. M.*)
that he the said (*A.*) shall and will at all times during the
residue of the said term of years now to come and un-
expired well and truly serve the said (*N. M.*) as an apprentice in

New master
agrees to per-
form the cove-
nants of the
indenture.

Apprentice
covenants to
serve new mas-
ter.

the said trade or business of in like manner in all respects
as he has been bounden to do by the hereinbefore in part recited
indenture *In witness &c.*

No. CIV.
*Assignment,
(Apprentices'.*

No. CV.

Assignment of Articles of Clerkship.

No. CV.
Clerkship.

1. *When Articles may be assigned.* | *Effect of Assignment.*

1. If the master die, or discontinue practice, or the contract be cancelled by consent of parties, or the clerk be discharged by rule of court, the 22 Geo. 2, c. 46, authorizes an assignment of the clerk to another master for the remainder of the term; but if the assignment be made by the executors of a deceased master, and any interval elapse between the decease of the old and the assignment to the new master, the clerk will not be admitted until he has served out the whole of the time with the new master, 2 Chit. Rep. 61. (As to the affidavit of the execution of the assignment, see *Affidavits*.)

When articles
may be as-
signed.

Effect of assign-
ment.

This Indenture made &c. Between (old master) of &c. of the first part (clerk) nephew of &c. of the second part and (new master) of &c. of the third part Whereas (recite articles of clerkship) Now &c. in consideration of the said covenants on the part and behalf of the (N. M.) hereinafter mentioned he the said (O. M.) at the request and by and with the consent and approbation of the said (C.) testified by his being a party to and executing these presents doth hereby assign transfer and set over unto the said (N. M.) his executors &c. as well the said recited articles and all benefit whatsoever to be had or made thereof as also all the right interest property profit advantage claim and demand whatsoever and howsoever to arise be had or made to him the said (O. M.) from henceforth of the service of the said (C.) during the now residue of the said term of years by force or virtue of the said recited articles or otherwise howsoever And he the said (N. M.) for himself &c. doth hereby covenant &c. with the said (O. M.) in manner &c. That he the said (N. M.) shall and will at all times during the said residue of &c. in the best manner he can instruct the said (C.) as his clerk in the business practised &c. And also that he the said (N. M.) his &c. shall and will from the day of the date hereof at his and their own costs and charges find allow and provide the said (C.) in competent and sufficient meat &c. and thereof and therefrom save harmless and indemnified the said (O. M.) his &c. And also shall and will pay to the said (C.) during the last

Assignment.

Covenant from
new master.

No. CV. years of the said term the yearly sum of £ for and towards
 Assignment, his expenses in providing clothes &c. And each of them the
 (Clerkship). said (O.) and (N. M.) doth hereby severally covenant with the
 said (C.) that they the said (O.) and (N. M.) at the request
 cost and charges of the said (C.) at any time after the expiration
 of the said term of years shall and will severally certify
 the respective times of service of him the said (C.) with them
 the said (O.) and (N. M.) and also at his request &c. do any
 other lawful act for getting him to be admitted an attorney &c.
 which shall be adjudged necessary for that purpose *In witness*
 &c.

ARBITRATION.

- | | |
|---|-------------------------------------|
| 1. Submission, how made. | 7. Time of making the Award. |
| By Parol. | 8. Submission void or revoked. |
| By Deed. | 9. Publication of an Award. |
| By Bond. | 10. Costs of Reference. |
| 2. Parties to the Submission. | 11. Arbitrators, who may be Umpire. |
| 3. Form of an Agreement to refer to Arbitration. | 12. Proceedings of Arbitrators. |
| 4. What Matters may be referred. | 13. Requisites of an Award. |
| 5. Extent of Submission. | 14. Award by Parol or by Deed. |
| 6. Power of examining on Oath given to Arbitrators. | 15. Delivery of an Award. |
| | 16. Performance of an Award. |
| | 17. Stamp Duty. |

Submission,
how made.

By parol.

By deed.

By bond.

Parties to the
submission.

SECT. 1. An agreement to refer any matter in dispute, commonly called a submission, may either be purely by the act of the parties themselves, or it may be by the interposition of a court of law. In the former case the submission may be by parol, but in the latter case it appears that a submission, unless in writing, cannot, by the 9th and 10th Will. 3, c. 15, be made a rule of court, *Sammways v. Elderley*, 2 Mod. 73; 7 Ves. 419; *Ansel v. Evans*, 7 T. R. 1. When the submission is in writing, it usually is with mutual covenants, under a penalty; sometimes by indenture or deed poll, or by bond, each party executing an obligation to the other, *Sammways v. Elderley*, 2 Mod. 73.

2. Every one who is capable of making a disposition of his property, or a release of his right, may be a party to a reference, but not such as are under any natural or civil disability, as *femes covert*s, infants, &c. A married woman may, however, be made a party to a

submission in any matter affecting her separate property, *Bateman v. Countess of Ross*, Dow. 235. Those only who are parties to the submission shall be bound by it. But a man is bound by an award to which he submits for another, as a husband for his wife, Sty. 351; a guardian for an infant, *Latch*, 207; or one of many partners for the rest, 2 Mod. 228. An attorney may submit to arbitration for his client, *Cayhill v. Fitzgerald*, 1 Wils. 28, 58; but a submission by bond binds himself, 12 Mod. 129.

3. At common law, where a cause was depending, the submission might be made a rule of court before the trial. The 9 & 10 Will. 3 extends this privilege to parties where no action has been brought. As to the effect of an agreement or covenant to refer to arbitrators, it was formerly held that such a reference was an implied stay of proceedings in a court of law, 1 Mod. 24; but it was afterwards determined by a rule of court, that no reference of a cause depending in the King's Bench should stay proceedings, unless it was expressed in the rule of reference to be agreed, that proceedings in this court should be stayed, 2 Ld. Raymd. 789; so likewise if no step has been taken towards a reference, a mere agreement to refer will be no bar to an action, *Kill v. Hollister*, 1 Wils. 129; and it has been frequently held, that such an agreement will not oust the courts of law or equity of their jurisdiction, *Thompson v. Charnock*, 8 T. R. 139; *Street v. Rigby*, 6 Ves. 818; and an action is not maintainable on a covenant to refer disputes to arbitration, *Tattersall v. Groote*, 2 B. & P. 131; and even if it be expressly stipulated in the agreement, that there shall be no action or suit at law or in equity, it seems that a court of equity will not, except in particular cases, enforce specific performance of such an agreement, *Waters v. Taylor*, 15 Ves. 10; *Gourlay v. D. of Somerset*, 19 Ves. 430.

Arbitration.

Force of an agreement to refer to arbitration.

4. The proper matters for arbitration are penal wrongs and uncertain obligations, as trespasses, reckonings, and the like, 9 Co. 78. Things in the realty may be submitted; for although no freehold can pass by the award, arbitrators may award that lands shall be conveyed, or that one party shall give the other a bond for quiet enjoyment and the like, Dy. 242; Bac. Ab. tit. Award, [A].

What matters may be referred.

5. The extent of the submission may be various, according to the pleasure of the parties, as of one particular matter only, or of many or every subject of litigation between them, which ought to be carefully expressed in the submission, to avoid ambiguity. A submission "of all matters in difference between the parties in the cause," and one "of all matters in difference in the cause between the parties," is not the same thing. By the former mode of expression, the submission is not confined to the subject-matter of the particular action, as it is by the latter, *Malcolm v. Fullarton*, 2 T. R. 45.

Extent of submission.

- Arbitration.* 6. It is usual to vest in the arbitrators a power of examining the parties and their witnesses upon oath, but if it were not a part of the agreement, the court could give them the authority to examine upon oath; and the parties submitting could not authorize the arbitrators or any other person to administer the oath, for an extra-judicial oath is not binding so as to incur the penalty of perjury. Now by the 3 & 4 Will. 4, c. 42, s. 39, the arbitrators are empowered to administer an oath or take an affirmation in all cases: so likewise by s. 40 of the same statute, arbitrators are empowered to compel the attendance of witnesses, whether the submission be by order of court or by private agreement.
- Power of examining on oath given to arbitrators.
7. It is proper to fix the time within which the arbitrators shall pronounce their award; but where the submission limits no time, it shall be understood to be made within convenient time. If by the terms of the submission the arbitrator be enabled, as he frequently is, to enlarge the time for making his award, he may enlarge it more than once, *Barrett v. Parry*, 4 Taunt. 658.
- Time of making the award.
8. The submission in general becomes void by the death of either of the parties, *Potts v. Ward*, 1 Marsh, 366; and may also be revoked by either party previous to the award being made and delivered, *Clapham v. Higham*, 7 B. Moore, 403; *S. C.* 1 Bing. 87. If the submission be by parol, the revocation may be by parol also, 2 Keb. 64; but where the submission is by deed, the revocation must be of as high a nature as the submission, 8 Co. 80 b; *Milne v. Greatrix*, 7 East, 607; and where the submission is made a rule of court, it cannot, by 3 & 4 Will. 4, c. 42, s. 39, be revoked without leave of the court. There may also be a virtual as well as an express revocation; as if a *feme sole* submit to arbitration, and marry before the award is delivered, the marriage is in effect a revocation, 2 Keb. 8, 65. In all cases of revocation where the submission is by bond, the bond is forfeited, 1 Brownl. 62.
- Submission void or revoked.
9. It is usual to insert in the submission the words "so as the arbitrator shall make and publish his award;" but the term "publish" does not imply a formal notification of the award to the parties, unless there be an express proviso to that effect, *Muslebrook v. Dunkin*, 9 Bing. 605; *S. C.* 2 M. & Sc. 740; 1 D. P. C. 722.
- Publication of an award.
10. Arbitrators cannot award the costs of reference, unless such power be given to them for that purpose in the submission, 1 Cowp. 127; *Whitehead v. Firth*, 12 East, 166; and therefore where it is agreed that all the costs shall abide the event of the award, the arbitrator can make no award respecting the costs, *Boodle v. Davis*, 4 Nev. & Man. 788. If no direction be given respecting the costs of the award, they are to be paid by both parties equally, *Grove v. Cox*, 1 Taunt. 165; *Hullock on Costs*, 424. The safer and more usual
- Costs of reference.

way is to provide in the submission, that the costs shall be in the discretion of the arbitrator, *Tidd's Pract.* 825.

Arbitration.

11. As an arbitrator is appointed at the discretion of the parties, any one whom the law supposes free, and capable of judging, may be chosen, even although he may be an interested party himself, or related to the opposite party, *Comb.* 218, unless his interest in the subject of reference or connexion with the opposite party was unknown at the time, *2 Vern.* 251. Where there are two arbitrators only, and they cannot agree, it is usual to provide that a third person should be chosen, who is called the umpire, whose nomination is either made by the parties themselves at the time of the submission, or left to the discretion of the arbitrators. In this latter case it has been held, that if the arbitrators elected one who refused to accept the office, they could not elect another, *1 Ld. Raymd.* 222; but the better opinion appears to be, that the arbitrators in such case have the power of election, *Com. Dig. Arbit. [F.]*. It may, however, be safer to provide against such an event by express stipulation. The appointment of an umpire is mostly under hand only, and in that case does not require any stamp, *Routledge v. Thornton*, *4 Taunt.* 704.

Arbitrators, who may be.

Umpire.

12. Arbitrators cannot reserve to themselves an authority to decide at a future period any point relating to the matter referred to them, *Palm.* 145; *12 Mod.* 139. Nor can they delegate their authority to others, *2 Atk.* 504; but where arbitrators award the substance of a thing to be done, they may refer it to others who are competent to settle the manner in which it shall be put into execution, *ib.* 501; *Emery v. Wase*, *5 Ves.* 846. Likewise arbitrators deriving their authority from the submission, their decision must not extend to persons and things beyond the scope of the submission, *2 Mod.* 309. In any case of flagrant misconduct on the part of an arbitrator, the injured party may maintain an action against him to recover a compensation in damages, *2 Wils.* 148; or file a bill against him in equity, *Lonsdale v. Littleedale*, *2 Vcs. jun.* 453.

Proceedings of arbitrators.

13. As to the requisites of an award, see *post*, AWARD.

Requisites of an award.

14. An award may be either by parol or by deed, *1 Salk.* 75. If by the terms of the submission the award must be under the hands and seals of the arbitrators, sealing only is not sufficient, *Palm.* 109.

Award by parol or by deed.

15. An award takes effect from the time of delivery, not from the day of the date, *3 Bulstr.* 313. If an award be ready for delivery on a certain day, fixed in the submission, it is sufficient, although no delivery be made, *Brown v. Vanser*, *4 East*, 584.

Delivery of an award.

16. Where parties bind themselves jointly and severally to perform an award, and two or more parties on one side be ordered to pay any sum of money, or do any particular act, each is answerable for the obedience of the others, *Mansell v. Burrridge*, *7 T. R.* 352. If no time be limited for the performance of what is directed to be done, it

Performance of an award.

Arbitration. must be performed within a reasonable time, Jenk. 136. If a thing is awarded to be done within a certain day after the date of the award, and it has no date, the day of delivery must be adopted in its place, *Armit v. Breame*, Ld. Raymd. 1076. Executors must obey the directions of an award, although not named in it, 2 Vent. 249. Where the submission is the mere act of the party, whether by parol or by obligation, performance may be enforced by an action upon the award or the submission, 1 Leon. 72; 1 Ld. Raymd. 122. If the submission be made a rule of court, non-performance is a contempt, and obedience to it may be enforced by attachment, otherwise the party may have his remedy by action, 1 Saund. 326; Stra. 695; Tidd's Pract. 834. When the payment of money only is awarded, application ought to be made to a court of law for enforcing payment; but where anything is directed to be done in specie, as to convey an estate, a bill in equity for specific performance will lie, *Hall v. Hardy*, 3 P. Wms. 187.

Stamp duty. 17. As to the stamp duty on the arbitration bond, see *post*, BOND; on award, see *post*, AWARD.

See further as to Arbitration, *Kyd on the Law of Awards*; *Watson on Arbitration and Awards*; and *Caldwell on Arbitration*.



No. CVI.

Agreement to refer Disputes.

No. CVI.

Agreement to refer Disputes to Arbitration.

Obs. This requires an agreement stamp, if under hand only. Where several persons enter into an agreement to refer a matter to arbitration, such agreement and the award require each but one stamp, *Goodson v. Forbes*, 6 Taunt. 171; S. C. 1 Marsh. 525.

Recital of disputes.

Articles of (a) Agreement &c. Between A. B. of &c. of the one part and C. D. of &c. of the other part *Whereas* disputes have arisen between the said parties hereto touching the several rights titles claims and demands as well of in and to a certain messuage or tenement situated &c. as of in and to a certain pew made by the said A. B. and situated &c. *Now therefore* for the final ending all such questions and disputes it is hereby covenanted by and between the said parties *(b)* that the rights titles

Agreement to refer disputes to arbitration.

(a) As to the effect of an agreement to refer, see *ante*, Pref. sect. 3.

(b) If it be agreed that the authority of the arbitrators shall not be revoked by the death of either party, then say, "for themselves severally and respectively and their several and respective heirs executors administrators and assigns." As to the revocation of the submission, where it is made a rule of court, see Pref. sect. 8.

claims and demands of the said A. B. of in to and out of the same premises or any part thereof shall be and are hereby referred to the arbitration and final determination of (*arbitrators*) And the award of the said (*A.*) if made in writing under their hands (*a*) and seals ready (*a*) to be delivered on or before the

No. CVI.

Agreement to refer Disputes.

Delivery of award.

(*a*) day of now next shall be binding and conclusive on all the parties And that for the better enforcing the performance and observance of such award the reference shall be

Reference to be made a rule of court.

made a (*b*) rule of her Majesty's Court of Queen's Bench at Westminster And further That the said parties hereto and each and every of them shall and will produce unto and deposit with the said (*A.*) all deeds evidences and writings relative to the premises in question in their respective possession or power

Parties to produce deeds &c.

And that each of them shall and will submit to be examined (*c*) upon oath and will as far as in them lies respectively do all such other acts and things as the said (*A.*) shall require for the better enabling them to make the said award And further

Parties witnesses to be examined on oath.

That in case the said (*A.*) shall not agree upon the said award or determination that it shall be lawful (*d*) for the said (*A.*) and they are hereby expressly empowered by writing under their respective hands to appoint another indifferent person to be umpire in or to concur and join with them in considering and determining all or any of the premises hereby referred to them

Umpire to be chosen.

And further That all (*e*) costs and charges attending the said arbitration shall be in the discretion of the said (*A.*) and shall be paid and satisfied pursuant to their award And that neither of the said parties shall (*f*) bring any action or suit against the other of them in relation to the premises or against the said (*A.*) or umpire In witness &c.

Costs at discretion of arbitrators.

Neither party to bring any action or suit.

(*a*) As to the form of the award, see *ante*, Pref. sect. 14, and delivery, sect. 14, and the time of delivery, sect. 7.

(*b*) See *ante*, sect. 1.

(*c*) As to the examination and attendance of witnesses, see sect. 6.

(*d*) See sect. 11.

(*e*) Or, if it be so agreed, "all costs and charges attending the said arbitration shall be equally borne and discharged by the said parties to these presents," see sect. 10.

(*f*) See sect. 3.



No. CVII.

*Submission by
Indenture.*

No. CVII.

Submission by Indenture.

Recital of agree-
ment to refer.

*This Indenture made &c. Between E. G. of &c. and J. A. of &c. executors of the last will and testament of P. M. late of &c. deceased of the first part R. G. one of the grandchildren of the said P. M. deceased by his daughter M. late the wife of the said E. G. now also deceased of the second part R. B. husband of L. B. granddaughter of the said P. M. deceased of the third part Whereas differences and disputes have arisen and are still depending between the said E. G. the elder and J. A. as executors aforesaid and the said R. G. and also between the said executors and the said R. B. in right of his wife L. B. touching the estate and effects of the said P. M. deceased And in order to put an end to the said differences and disputes [and to obtain an amicable adjustment thereof] the said parties have and each of them hath agreed to refer the same to the award of I. W. of &c. N. A. of &c. and E. G. of &c. or any two of them arbitrators indifferently elected and named to arbitrate award order judge and determine of and concerning the said differences and disputes between the said parties respectively Now this Indenture witnesseth That they the said E. G. and J. A. as executors aforesaid and the said R. G. and R. B. do and each and every of them for himself severally and respectively and for his several and respective heirs executors and administrators doth covenant &c. with and to each other his heirs executors and administrators respectively well and truly to stand to obey &c. the award &c. of the said (arbitrators) or any two of them arbitrators indifferently elected &c. to arbitrate &c. of and concerning all and all manner of actions &c. (see *next precedent*) touching the premises or any thing in any wise relating thereto (a) so as the said award of the said arbitrators or any two of them be made &c. And it is also agreed &c. by and between the said parties (*submission to be made a rule of court, see last precedent*) And the said parties do hereby further agree that none of them shall or will prosecute any action or suit in any court of law or equity against the said (A.) any or either of them or bring or prefer any bill in equity against each other of and concerning the premises until the said award be made and delivered And also that all*

(a) As to the extent of the submission, see sect. 5.

costs and charges attending the present arbitration shall be in the discretion of the said (A.) or any two of them and paid and satisfied pursuant to their award *And further* that the said parties &c (*produce deeds &c. see last precedent*) *In witness &c.*

No. CVII.
Submission by
Indenture.

No. CVIII.

Arbitration Bond.

No. CVIII.
Bond.

Obs. An arbitration bond requires a stamp of 1l. 15s. and a further Stamp duty. progressive duty of 2s. 6d. for every 1080 words above the first 1080; but where on the fly leaf of an arbitration bond was an indorsement bearing date after the time limited by the bond for making the award, and stating that the parties within-named had met that day by consent on the award, this was held to be a new agreement to refer, and was not admissible in evidence without a stamp, *Stephens v. Lowe*, 9 Bing. 32; S. C. 2 M. & Sc. 44. An agreement stamp is, however, not necessary to an arbitration bond, containing, besides the usual covenants, an agreement as to the payment of costs, *Wansborough v. Dyer*, 2 Chit. 40.

Know all Men That I A. B. of &c. am held and firmly bound to C. D. of &c. in the sum of £ of &c. or to his certain attorney executors administrators or assigns for which payment to be well and faithfully made I bind myself my heirs executors and administrators firmly by these presents Sealed with my seal Dated the day of in the year of the reign of our Sovereign Lady and in the year of our Lord

Whereas differences have arisen and are depending between the above bounden A. B. and the above named C. D. concerning the occupation management and cultivation by the said C. D. of a certain farm situate at in the county of the property of the said A. B. lately held by the said C. D. as tenant to the said A. B. and also concerning the payment of the several sums of money paid laid out and expended by the said A. B. for ploughing harrowing and manuring &c. previous to the said C. D. entering upon the same as tenant and likewise concerning the rent payable in respect of the said farm from the said C. D. and all which differences and demands concerning the same the said parties have agreed to refer to the award judgment and determination of (*arbitrators*) arbitrators indifferently chosen by and between the said parties to award arbitrate and determine concerning the same and in case the said arbi-

Recital of agree-
ment to refer
disputes to the
arbitration of
arbitrators,

No. CVIII.
Bond.

or umpire.
Condition.

trators cannot determine the same within the time hereunder limited then to the umpirage of a third person to be by the said (A.) chosen as umpire *Now therefore* the condition of the above written bond or obligation is such that if the above bounden A. B. his heirs executors and administrators and every of them do and shall on his and their part and behalf in and by all things well and truly stand to observe perform fulfil and keep the award arbitration final end and determination of (A.) arbitrators indifferently chosen to arbitrate award adjudge and determine upon and concerning the occupancy and management of the said farm and the sum laid out by the said A. B. in the cultivation of the same and the rent payable in respect of the same and also touching and concerning all and all manner of actions causes of action suits [bills bonds specialties covenants contracts promises accounts reckonings judgments executions extents quarrels controversies trespasses] damages and demands whatsoever both at law and in equity had moved brought commenced sued prosecuted done suffered or committed by or between the said parties so as the award of the said (A.) or any two of them be made in writing under their hands and seals ready to be delivered to the said parties in difference on or before the day of And if the said (A.) shall not make such their award of and concerning the premises within the time limited as aforesaid Then if the said A. B. his heirs executors and administrators and every of them on his and their part and behalf do and shall well and truly stand to &c. the umpirage of the said (*umpire*) being a person indifferent named and chosen by the said parties as umpire in and concerning the premises so as the said (U.) doth make and set down his award and umpirage &c. in writing under his hand and seal ready to be delivered to the said parties in difference on or before the day of (a) Then this obligation to be void or else to remain in full force and virtue.

(a) Here may be added, if necessary, "*And the said A. B. doth also consent and agree &c. (witnesses to be examined on oath &c., as in the last precedent) And also that the costs &c. shall be in the discretion of the referees &c. And further (submission to be made a rule of court &c.)*"

No. CIX.

No. CIX.

*Rule of
Reference at
Nisi Prius.**Rule of Reference at Nisi Prius when a Juror is withdrawn.*

London to wit. At the sitting of *Nisi Prius*, held at Guildhall, in and for the city of London, on &c., and in the year of the reign of our sovereign &c., before the Right Honorable Chief Justice of our Lady the Queen, assigned to hold the Pleas before himself.

B. v. S.—It is ordered by the court, by and with the consent of the plaintiff and defendant, their counsel and attornies, that the last juryman sworn and impanelled in the cause be withdrawn out of the panel, and that all matters in difference between the said parties be referred to the award, order, arbitrament, final end and determination of F. C., of the Inner Temple, Esquire, so as he shall make and publish his award in writing, of and concerning the premises in question, on or before the day of Hilary Term now next ensuing. And that the said parties shall and do perform, fulfil and keep such award so to be made by him the said arbitrator as aforesaid. And it is also ordered, by and with such consent as aforesaid, that the costs of the said cause shall abide the event and determination of the said award, and that the costs of the said reference shall be in the discretion of the said arbitrator, who shall direct and award by whom, and to whom, and in what manner the same shall be paid. And it is likewise ordered, by and with such consent as aforesaid, that the plaintiff and defendant respectively are to be examined upon oath, before the said Lord Chief Justice, or some other justice of the same court of our Lady the Queen, before the Queen herself, if thought necessary by the said arbitrator, and do produce before the said arbitrator all books, papers and writings, touching and relating to the matters in difference between the said parties, as the said arbitrator shall think fit, and that the witnesses of the plaintiff and defendant respectively are to be examined upon oath, to be sworn before the said Lord Chief Justice or some other justice of the same court. And it is likewise ordered, by and with such consent as aforesaid, that neither the plaintiff nor the defendant shall prosecute, or bring any action or suit, in any court of law or equity against each other, of and concerning the premises in question so as aforesaid referred. And it is further ordered, by and with such consent as aforesaid, that if either party shall by affected delay or otherwise wilfully prevent the

No. CIX.
*Rule of
 Reference at
 Nisi Prius.*

said arbitrator from making an award, he shall pay such costs to the other as the said court of our said Lady the Queen, before the Queen herself, shall think reasonable and just. And, lastly, it is ordered by the like consent as aforesaid, that the said court of our said Lady the Queen, before the Queen herself, may be prayed that this order may be made a rule of the same court.

By the Court.



No. CX.
*Submission a
 Rule of Court.*

No. CX.

Rule for making a Submission by Bond a Rule of Court.

A. B. v. C. D. In the Common Pleas,
 Term &c.

Upon reading the affidavit of G. H. and another, and the bond or obligation, with the condition thereof thereunder witten, bearing date &c., duly executed by C. D., of T., Esquire, to A. B., of P., Esquire, the tenor and effect of which said bond and obligation is in the words and figures following, that is to say,

Know all men &c. (*set out the bond and condition verbatim*). It is ordered, that the said bond and the condition thereof, and the submission between the parties in the said condition mentioned, be and the same is hereby entered and made a rule of this court, pursuant to the statute in such case made and provided.



No. CXI.
*Order of
 Reference.*

No. CXI.

Order to refer all Matters in Difference in the Cause.

Rolls.

Between { S. F. and others, plaintiffs.
 J. H., defendant.

On motion of plaintiff's counsel, alleging plaintiff's bill and defendant's answer; and cause being at issue, witnesses had been examined on the part of the plaintiff and publication had passed in the cause, and plaintiff and defendant had since agreed to refer all matters in dispute between them in the cause to the award of _____, and therefore praying that the same may be referred to his award accordingly: on which and on hearing defendant's counsel, who consented thereto, It is ordered, That all matters in difference between plaintiff and defendant in the

cause be referred to the award of &c. so as the award be made in writing &c. And in case the said arbitrator shall not be prepared to make his award at the time aforesaid, the parties from time to time to apply for and consent to such enlargement of the time as the said arbitrator shall certify, and the court deem reasonable. And also, that the costs of the suit, and reference, and the award, lie in the discretion of the said arbitrator, and that the parties and all witnesses to be by them produced, if required by the said arbitrator or either party, be examined upon oath, to be sworn before one of the masters of the court, and that plaintiff be at liberty to read before the arbitrator the depositions in the cause, and defendant be at liberty to examine before the arbitrator the witnesses to such depositions, and that all deeds, books, &c. be produced to the said arbitrator, and that neither party prosecute any action or suit against the arbitrator or each other concerning the premises; and if either party shall by affected delay &c. (see *Rule*), and that seven days' notice of any appointment to proceed on such reference, to be given to each party and their solicitor, be deemed good notice; and that if either party, being duly summoned, neglect or refuse to attend arbitrator, he be at liberty to proceed without such attendance and make his award *ex parte*. And either party be at liberty to apply to the court to have said award made an order of the court.

No. CXI.
*Order of
Reference.*

—◆—
No. CXII.

*Order that an Agreement be made an Order of the Court
of Chancery.*

No. CXII.
*Order of
Chancery.*

Whereas by Articles of Agreement bearing date &c. it is recited and agreed as follows: (*setting forth the instrument verbatim*). Now upon motion of defendant's counsel, and upon producing said agreement, praying that the same may be made an order of court, It is ordered that said agreement be made an order of court to be observed and performed by all parties thereto according to the tenor and true meaning thereof, Mr. of counsel for the plaintiff, consenting thereto.

—◆—

No. CXIII.

Order of
Chancery.

No. CXIII.

Order to make an Award an Order of the Court of Chancery.

Upon motion &c. praying the writing of award, hereafter mentioned, bearing date the day of in the year of our Lord 18 , under the respective hands and seals of A. B. and C. D., arbitrators &c., and by them sealed and delivered, being first duly stamped, in the presence of E. F. may be made an order of this Court: and the said writing of award being now produced, the same appears to be in the words and to the tenor following, that is to say; To all to whom &c. (*set out the award verbatim*) whereupon and upon hearing &c. and an affidavit made by the said &c. his lordship doth order &c.



No. CXIV.

Appointment of
Arbitrators.

No. CXIV.

Acceptance by the Arbitrators of the Appointment.

We the undersigned A. B. and C. D. the referees within named and appointed do hereby accept of the appointment as arbitrators for the purposes therein expressed And for the proceeding in the investigation of the matters in dispute between the parties within mentioned we appoint and fix to meet at the house of in &c. by eleven o'clock in the forenoon Witness our hands this day of 18 .

Witness

A. B.

C. D.



No. CXV.

Appointment of
Umpire.

Stamp.

No. CXV.

Appointment of a Third Arbitrator, or Umpire.

Obs. The appointment of an umpire made in writing by the arbitrators requires no stamp, *Routledge v. Thornton*, 4 Taunt. 704.

We A. B. and C. D. the arbitrators within named by this memorandum in writing under our hands made before the entering upon the within-mentioned arbitration do hereby nominate and appoint E. F. of &c. (a) the third arbitrator to whom together

(a) If the consent of the third person has not been obtained, add, "on condition that he do within days from the date hereof by some writing under his hand consent to act therein accordingly."

with ourselves the within matters in dispute between the parties within named shall be referred according to the tenor and effect of the within-written rule [bond obligation or indenture] *As witness &c.*

No. CXV.
*Appointment of
Umpire.*

No. CXVI.

Another.

No. CXVI.

We the undersigned A. B. and C. D. arbitrators within named having considered of the matter in difference between the said parties and having heard what each of them had to offer and allege in his behalf but not having agreed in relation thereto so as to enable us to make an award between the said parties do hereby in pursuance of the power and direction given to us for that purpose by the within-written instrument nominate and appoint E. F. of &c. to be umpire between the said parties in determining the matters in dispute as aforesaid *As witness &c.*

Witness

A. B.

C. D.

No. CXVII.

Nomination of an Umpire by Arbitrators appointed.

No. CXVII.
By Arbitrators.

To all to whom &c. Whereas by an order of the Lord High Chancellor bearing date the day of in a cause then depending in the High Court of Chancery where F. G. I. W. and K. L. were complainants and I. B. G. W. and R. N. were defendants it was then ordered by the Lord High Chancellor in Court as between the plaintiff F. G. and the defendants I. B. and G. W. that all matters in difference between the said parties in this cause should be referred to the award and determination of us (*arbitrators*) of &c. and that we should make our award therein on or before the first day of Trinity Term then next and in case we should not agree in opinion that we should name an umpire who should make an umpirage on or before the day of Term then next *And whereas* we the said (*arbitrators*) have taken the matters so referred to us into our consideration but cannot agree in opinion concerning the same *Now know ye* That in pursuance of the power and direction aforesaid in respect

No. CXVII. to the naming of an umpire in the said matters we the said (*arbitrators*) do hereby nominate and appoint &c. *As witness &c.*

By Arbitrators.

No. CXVIII

No. CXVIII.
Time for making
the Award.

Enlargement of the Time for making an award by the Parties in Dispute.

Know all &c. That we the within-named A. B. and C. D. for ourselves respectively and for our respective heirs executors and administrators have given and granted and by these presents do give and grant unto the within-named (*arbitrators*) until the day of now next ensuing for making their award of and concerning the several matters and things to them referred as within mentioned so that they may make their award in writing &c. on or before the day of *As witness &c.*

No. CXIX.

No. CXIX.
Time for making
the Award.

Enlargement of the Time for making an Award by Arbitrators.

We the undersigned (*arbitrators*) by virtue of the powers given to us for that purpose do hereby extend and enlarge the time for making our award until the day of now next ensuing on or before which said day our award in writing of or concerning the matters in difference within mentioned shall be made and published. *As witness &c.*

AWARD.

- | | |
|---|---|
| 1. <i>Requisites of the Award.</i>
<i>First, must be consistent with the Submission.</i>
<i>Second, must be certain.</i>
<i>Third, must be mutual.</i>
<i>Fourth, must be final.</i>
<i>Fifth, must be of a Thing possible and lawful.</i> | 2. <i>Amount of Stamp Duty.</i>
<i>Deed Stamp.</i>
<i>Ad valorem Stamp.</i>
3. <i>What an Award within the Stamp Act.</i>
4. <i>Effect of an improper Stamp.</i>
5. <i>Affidavit to support, &c. an Award.</i> |
|---|---|

SECT. 1. The general requisites of an award are, First, That the award must be consistent with the submission; Secondly, That it must be certain; Thirdly, That it must be mutually satisfactory; Fourthly, That it must be final; Fifthly, That it must be of a thing possible and lawful. Requisites of the award.

First. *The award must be consistent with the submission.* If it be made of any other thing than what is contained in the submission, it is void; as where the submission is of all differences at the time, an award as to differences subsequent to the submission is bad, *Roll. Arbit. (C.)* 8 S. O.; *Barnardiston v. Fowler*, 10 Mod. 204; or an award that a lease should be granted from a certain time, which by the submission ought to have been awarded from a time prior, *Bonner v. Liddell*, 1 B. & B. 80; so under a submission of all matters in difference between A. and B., an award on matters in difference between A., B., C. and D. is bad, *Fisher v. Pimbly*, 11 East, 188; so an award of a sum of money to one of the parties, and another sum to a stranger, is good for the party himself, but void for the stranger, 2 Saund. 293. Must be consistent with the submission.

Secondly. *The award must be certain.* Therefore where the award is to give security for the payment of a sum of money, it is bad, because uncertain what security, whether by bond or otherwise, *Thine v. Rigby*, Cro. Jac. 314; or an award of a bond for quiet enjoyment, without appointing a certain sum, is void, *Salmon's case*, 5 Co. 77; S. C. Cro. Eliz. 432. But the certainty required in an award is to a common intent, and the uncertainty must expressly appear on the face of the award, 1 Burr. 277. Must be certain.

Thirdly. *The award must be mutually satisfactory.* It must not be on one side only; what is awarded to be done to one, must be an advantage to both, namely to give satisfaction to one and discharge the other; therefore where A. and B. submit all actions by A. against B., and by B. against A., an award that A. shall go quit, and not B., is void, *Roll. Abr.* 253; therefore where a suit in Chancery, in which some of the plaintiffs were infants, was referred by an order of that Must be mutual.

- Award.* court, an award made in pursuance thereof was held bad, as there was nothing to bind the infants, and consequently no mutuality.
- Must be final.* Fourthly. *The award must be final*, therefore an award that if the plaintiff on account prove certain articles against the defendant, then he shall pay so much as the plaintiff was damnified thereby, is not final, *Selsby v. Russel*, Comb. 456. But an award of a thing to be done at a future day, if such thing must be absolutely done, is good, *Palm*. 110.
- Fifthly. *The award must be of a thing possible and lawful*, as an award of a payment at a day past is bad, because impossible, 1 Inst. 206; or an award that one shall steal and the like, ib.
- Amount of stamp duty.* 2. The stamp duty required on an award is 1l. 15s.; and where the same together without any schedule or other matter put or indorsed thereon, or annexed thereto, contains 2160 words, then for every entire quantity of 1080 words over and above the first 1080, a further progressive duty of 2s. 6d. But where an opinion is given on a case, it has been held that, supposing a stamp on the opinion was necessary, the case formed no part of it, although the opinion was annexed to the case, and therefore need not be reckoned in computing the number of words, *Boyd v. Emmerson*, 2 Ad. & Ell. 184; S. C. 4 Nev. & Man. 99.
- Deed stamp.* An award in writing, under seal, need not have a deed stamp, unless delivered as a deed, but if delivered as an award, an award stamp held sufficient, *Brown v. Vawser*, 4 East, 584; *Blundell v. Brettargh*, 17 Ves. 236. This distinction is, however, rendered immaterial by the 55 Geo. 3, c. 184, which makes an award in all cases subject to a deed stamp. An award by commissioners under an inclosure act need not have an *ad valorem* stamp upon the money consideration, *Doe v. Preston*, 7 B. & C. 392.
- Ad valorem stamp.*
- What an award within the Stamp Acts.* 3. As a rule where a document on the face of it does not appear to be an award, it need not be stamped as such, therefore where a defendant had stated that if a miners' jury should say that the shaft was his, he would remunerate the plaintiff, held, that the verdict of the jury given in writing, and stating that the shaft was in defendant's possession, was not an award, and did not require an award stamp, *Sybray v. White*, 1 M. & W. 435; S. C. 2 Gale, 68; so it seems that an opinion given by counsel, to whom a case was referred for his opinion, was held not to be an award within the provisions of the Stamp Act, *Boyd v. Emmerson, ub. sup.*
- Effect of an improper stamp.* 4. If an award be made on an improper stamp, and no application be made to enforce it, the court will not set it aside, *Preston v. Easton*, 7 T. R. 95; see further as to setting aside awards, 2 Bacon. Abr. tit. Arbit. and Award; *Watson on Awards*, 2d ed. Chap. ix.
- Affidavit to support, &c. an award.* 5. An affidavit to support or set aside an award, has been held to require a stamp, not being made for the immediate purpose of being

filed, read, or used in a court of law or equity, according to the 55 Geo. 3, c. 184, *Templeman v. Reed*, cited by Collins on the Stamp Laws, 284.

Award.

—◆—
No. CXX.

Award pursuant to a Clause in Articles of Agreement for making Repairs.

No. CXX.

Award under an Agreement.

To all to whom these Presents shall come We the (arbitrators) send greeting *Whereas* by certain articles of agreement bearing date &c. and made between A. B. of &c. gentleman of the one part and C. D. of &c. builder of the other part he the said C. D. in consideration of the sum of £ to be paid to him as hereinafter is mentioned did covenant with the said A. B. that he the said C. D. at his own proper expense would on or before the day of in a complete and workmanlike manner and with good and substantial materials of all sorts make the several alterations reparations and improvements to a messuage situate &c. and in such manner as therein is more particularly mentioned and set forth in consideration whereof the said A. B. did covenant with the said C. D. that he should and would pay unto the said C. D. the sum of £ in manner following that is to say the sum of £ part thereof on the day of then next ensuing and the sum of £ residue thereof within fourteen days next after the said messuage should be completely repaired and improved in manner as therein before mentioned And it was thereby mutually agreed that if any dispute should arise between the said parties relating to the performance of the said articles that then the same should be left to the decision of two indifferent persons as arbitrators the one to be named by the said A. B. and the other by the said C. D. or to an umpire to be chosen by the said (arbitrators) *And whereas* the said C. D. hath at his charge made such alterations reparations and improvements to the said messuage pursuant to his covenant contained in the said articles and hath received of the said A. B. the sum of £ being the first payment mentioned in the said articles *And whereas* some disputes have since arisen touching the reparations made as aforesaid and the same have been referred to us the said (arbitrators) *Now Know ye* that we the said (arbitrators) having fully viewed and inspected the several alterations reparations and improvements done in and to the said messuage by

Recital of an agreement by a builder to make repairs.

To refer disputes to arbitration.

Performance of the contract by the builder.

Disputes between the parties.

No. CXX.
Award under
an Agreement.

Award.

Parties to execute mutual releases.

the said C. D. do hereby award that the sum of £ shall be deducted from the said sum of £ so remaining to be paid to the said C. D. as aforesaid *And* we the said (*arbitrators*) do hereby declare award and determine that there is now justly due and ought to be paid to the said C. D. exclusive of the said sum of £ so paid to him and of the said sum of £ hereby agreed by us the said (*arbitrators*) to be deducted as aforesaid the full sum of £ of lawful &c. which said sum of £ we do hereby order and award shall be paid by the said A. B. to the said C. D. on the day of next at the house known &c. and at the hour of in the forenoon of the same day *And* we do hereby further award that the sum of £ being the expense and charges incident to the arbitration shall be paid by the said A. B. and C. D. in equal moieties *And lastly* upon payment of the said sum of £ we do hereby award and direct that the said parties shall duly execute and deliver to each other mutual releases in writing of all and every matter heretofore in difference between them and so referred to us as aforesaid if and when either party shall require the same and that the expenses of such release shall be paid by the party requiring the same *In witness &c.*

Received the day of 18 of the sum of £ being the amount by the annexed award directed to be paid to me and which I hereby acknowledge to have received in addition to £ heretofore received on account of my bill delivered to the said A. B. in full discharge and satisfaction of all claims and demands whatsoever which I have or ever had against the said A. B.

£

C. D.

No. CXXI.
Award under a
Submission by
Deed.

No. CXXI.

Award under a Submission by Deed.

To all to whom these Presents shall come (Arbitrator) of &c. sendeth greeting Whereas by a certain deed bearing date &c. and made between (debtor) of &c. of the first part and (trustees) trustees on behalf of themselves and the other creditors of the said (debtor) of the second part and the several persons whose names are thereunto subscribed and seals affixed being creditors of the said (debtor) of the third part and A. B. of &c. of the fourth part after reciting among other things That the said A. B. claimed that the said partnership concern of N. O. and O. P.

was indebted to him in the sum of £ or some other sum or sums of money secured to him by the bond of the said N. O. and O. P. some or one of them or by some other security or securities but it was contended on the part of the said (T.) and other the creditors of the said (D.) that he the said A. B. was not entitled to recover any part of the said debt or sum of the said partnership concern until all the creditors of the said concern were paid off and satisfied their full and whole debts of twenty shillings in the pound inasmuch as it appeared to them that the said A. B. at the time such security or securities were so given as aforesaid was a partner in the said concern of N. O. and O. P. and still remained a partner therein so far as respected the creditors of the said concern It was covenanted declared and agreed by and between all and every the said parties hereto that in order to settle such differences and disputes and particularly the said A. B. for himself his executors and administrators did covenant and agree to and with the said (T.) as trustees as aforesaid that the said matter in difference between them should be left to the award &c. of &c. who should award and determine whether the said A. B. was not a partner in the said concern of N. O. and O. P. at the time &c. and whether he did or did not still remain &c. And in case it should be awarded that the said A. B. is entitled so to recover on such security or securities then he should be entitled to receive the benefit and provisions of the deed now in recital equally with the other creditors of the said (D.) but in case it should be awarded that he was a partner in the said concern of N. O. and O. P. at the time of taking such security &c. then he the said A. B. his heirs executors and administrators should and would whenever thereunto required by the trustees before named grant convey assign and assure by such conveyances and assignments or other assurances as they should require unto them the said (T.) their heirs executors administrators and assigns all his interest in the partnership estate stock and effects and in all other the hereditaments and premises hereby covenanted to be assigned and conveyed to be held by them upon the trusts hereinbefore declared to and for the benefit of all other the creditors of the said (D.) And moreover that all and every the parties hereto should and would stand to &c. the award &c. so as the same &c. *Now know ye &c.* I the said (A.) having &c. do award &c. that the said A. B. was not a partner in the said concern of N. O. and O. P. at the time the said security or securities or any of them were given to

No. CXXI.

*Award under a
Submission by
Deed.*

No. CXXI. him by them as aforesaid and that he the said A. B. is entitled
Award under a in law to recover on the said security or securities before all the
Submission by other creditors of the said concern shall have been paid their full
Deed. and whole debts of &c. in the pound *In witness &c.*

—◆—

No. CXXII.

No. CXXII. *Award of Two Arbitrators under a Submission by Cross Bonds.*
Award under
Cross Bonds.

Recital of arbit-
 ration bonds.

To all to whom these presents shall come We (one Arbitrator) of &c. and (other Arbitrator) of &c. send greeting *Whereas* by two several bonds or obligations in writing under the respective hands and seals of A. B. of &c. and C. D. of &c. bearing date respectively on or about the day of last past the said A. B. became bound to the said C. D. and the said C. D. to the said A. B. in the penal sum of £ with conditions thereunder written to stand to abide fulfil and keep the award and final determination of us the said (A.) indifferently chosen to arbitrate award and determine of and concerning all matters referred to us so as the award of us the said (A.) was made and set down in writing under our hands and seals ready to be delivered on or before the day of next ensuing as by reference to the said bonds or obligations will more fully appear *And* it was agreed by the said parties that the submission should be made a rule of her Majesty's Court of Queen's Bench which was afterwards accordingly done *And also* that the costs and charges of the said bonds and obligations and all costs and charges of and attending the said arbitration and award should be in the discretion and subject to the award of us the said (A.) (a) *Now know ye* That we the said (A.) having taken upon ourselves the charge and business of the said award and having heard the allegations and proofs of both the said parties and their respective witnesses concerning the several matters referred to us and also upon our view and inspection of the said farm lately occupied by the said A. B. upon due deliberation do find and award in manner following that is to say *First* we find and award That the said A. B. hath not performed and fulfilled the several co-

Award.

(a) If the time has been enlarged by consent of parties, say, "*And whereas* by a writing under the hands of the said A. B. and C. D. bearing date &c. the time in the in part recited bond limited for our making our award was enlarged until the day of next ensuing."

venants contained in his lease of the said farm for laying a certain quantity of lime thereupon for scouring and ditching and for repairing the hedges fences and gates and respecting the ploughing and course of husbandry thereof *And we further find and award* That the said A. B. hath ploughed a certain field of acres part of the said farm and hath sown acres thereof with wheat contrary to the covenants contained in his said lease the whole crop of which has been reaped by the said C. D. *And we the said (A.) do further award* That the said C. D. shall have and take to his own use the whole of the said crop grown in the said field of acres and that the said A. B. shall be entitled to receive from the said C. D. the value of the said acres of wheat in the said field at the rate of £ per acre exclusive of tithe *And we the said (A.) do hereby further award and determine and adjudge* that the said A. B. his executors or administrators shall on or before the day of instant pay or cause to be paid unto the said C. D. his executors or administrators at the house of &c. the sum £ in satisfaction for the damages done to the said farm of the said A. B. by his breach of the covenants contained in his said lease *And we further award and order* That the said A. B. shall well and truly pay the costs charges and expenses incident to and incurred by this arbitration and award (except the charges and expenses of I. F.) *And we further hereby award* That the said C. D. shall and do on the said day of instant at the time and place aforesaid pay unto the said A. B. the sum of £ per acre for acres of wheat part of the said close of acres and that the said C. D. shall pay the tithe due in respect thereof *In witness &c.*

No. CXXII.
*Award under
Cross Bonds.*

No. CXXIII.

Another Award under a Submission by Cross Bonds, between a Surveyor and a Company.

No. CXXIII.
*Another under
Cross Bonds.*

To all to whom these Presents shall come I (Arbitrator) of &c. send greeting *Whereas* in and by several bonds or obligations in writing bearing date respectively on or about &c. the Company of G. and (Surveyor) of &c. became bound to each other in the penal sum of £ with conditions thereunder witten That if the said Company and their successors and the said (S.) his heirs executors and administrators did and should for and on their

Recital of
bonds.

Conditions.

No. CXXIII.
*Another under
 Cross Bonds.*

Stipulations.

Award.

respective parts and behalves in all things well and truly stand to abide by obey perform fulfil and keep the award order arbitration final end and determination of me the said (A.) of and concerning all and all manner of actions causes of action suits &c. (see *Arbitration Bond*) and demands whatsoever both at law and in equity at any time theretofore had made moved done paid sustained commenced prosecuted or depending by and between the respective parties so as the said award should be made in writing &c. (see *the two last precedents*) And it was thereby agreed that the costs &c. And also That the money to be awarded to the said (S.) if any should be awarded to be paid to him or his order within ten days after the then next quarterly court of directors from the publication of the said award and that it should be lawful for the said (A.) in making his said award to direct and appoint general releases to be made and executed by and between the said parties respectively or mutually to be exchanged between them as the nature of their respective cases should require and in his judgment be deemed expedient And also to direct and award by whom the expense of such general release or releases should be paid and discharged Now Know ye and these Presents witness That I the said (A.) having taken upon myself the said reference and having been attended by the said parties or their solicitors or agents and having examined their witnesses heard their respective allegations and investigated the accounts and transactions by and between the said parties and maturely considered the same do make my award in manner following that is to say I award and determine That there is now justly due and owing to the said (S.) from the said Company of G. the sum of £ And I do award order and direct That the said sum of £ be paid to the said (S.) or order within ten days after the next quarterly court of directors which shall be held after the publication of this my award And I do further order and direct That each of the said parties shall pay their own costs charges and expenses of the said bonds of arbitration and their witnesses and all matters whatsoever attending and incidental to the said reference and that the costs and charges attending this my award shall be paid equally between them And lastly I do award and direct that general releases be made &c. (see *first precedent*) In witness &c.

No. CXXIV.

Award of Differences between two Copartners under a Submission by a Judge's Order.

No. CXXIV.

*Award under a
Judge's Order.*

To all to whom these Presents shall come I (Arbitrator) of &c. Recital of order.

send greeting Whereas at a sitting of *Nisi Prius* after term last holden at the Guildhall in and for the city of London and county of the same (a) on Wednesday the day of and by adjournment on the day of the same in the year of our Lord 18 before the Right Honorable Lord Chief Justice of the Common Pleas it was ordered by the said court in an action then and there depending between A. B. plaintiff and C. D. defendant by and with the consent of all parties their counsel and attornies that a juror should be withdrawn and all matters in difference between the said parties should be referred to the award arbitrament final end and determination of me the said (A.) so as I should make and publish my award in writing under my hand of and concerning the premises in question on or before the day of then next ensuing And that the said parties should perform fulfil and keep such award so to be made by me the said (A.) as aforesaid And that the costs of the cause should abide the event of the said award And that the costs of the present reference should be in the discretion of me the said (A.) who should direct and award by whom to whom and in what manner the same should be paid as by the said order reference being thereto had will more fully appear *And whereas* the time for making and publishing the said arbitrator's award in pursuance of the said recited order hath by several rules of the said Court of Common Pleas made from time to time by and with the consent of the said parties been and the same now stands enlarged until the day of this present-term *Now know ye* that I the said (A.) having taken upon myself the charge and burthen of the said reference and having inspected the copartner-ship books of account and having examined and duly considered the allegations vouchers proofs and witnesses of the said parties respectively do make and publish this my award of and concerning the premises that is to say *I do award order and direct That* Time of making award enlarged. all proceedings in the said cause shall cease and be no further prosecuted *And* that the said C. D. shall pay &c. Award. (as before, *Award under Submission by Deed*) which said sum of £
I do adjudge and declare to be justly due from the said C. D. to

Time of making
award en-
larged.

Award.

(a) Or, "at Westminster in and for the county of Middlesex."

No. CXXIV.
*Award under a
Judge's Order.*

C. D. to pay
A. B. a certain
sum.

A. B. to collect
in the debts &c.

To give a bond
to C. D. that he
will account.

the said A. B. for or upon the matters contained in the declarations in the said cause subject nevertheless to this proviso that if on or before the said day of the said C. D. shall pay or discharge all or any part of the balances due to the creditors of the said firm of A. B. and C. D. then upon delivering to the said A. B. at the time and place aforesaid proper receipts and discharges for so much as he shall have so paid the same shall be taken and deemed as payment of so much of the said sum of £ as by the said receipts and discharges shall be expressed to have been received or otherwise that he the said C. D. shall pay the whole of the said sum of £ to the said A. B. who thereout shall pay and satisfy such balances to the several persons as aforesaid *And I do further award order and direct That the said C. D. do and shall permit the said A. B. to collect and receive for their joint use the several debts and sums of money as follow that is to say (here state the names of the several debtors to the firm and the amount of their debts) And I do further award and direct That the said A. B. shall be at liberty to bring any action or actions either in his own name or in their joint names for the recovering of any debt or debts sum or sums of money hereinbefore mentioned But nevertheless if the said A. B. should bring any actions in the name of the said C. D. without his consent first had and obtained that then the said A. B. shall save harmless and indemnify the said C. D. from all consequences charges and expenses attending any such action if the same should happen to fail and be fruitless And I do further award order and direct That the said A. B. shall not compound or compromise any action to be brought for the recovery of the said debts or sums of money without the consent of the said C. D. in writing for that purpose first had and obtained And that the said A. B. shall within days after the payment of the said sum of £ so awarded at his own expense enter into and deliver a bond to the said C. D. in the penalty of £ with a condition thereunder written for making the same void in case he the said A. B. shall give to the said C. D. an account of his proceedings in the collecting of the said outstanding debts from time to time within six weeks after any request in writing so to do And shall also from time to time as the same debts are respectively received pay to the said C. D. one moiety thereof all reasonable expenses attending the collecting and receiving the same being first deducted And lastly I do hereby award order and direct That each of the said parties shall and do bear and pay his own costs*

of this reference And that the costs of this our award be paid in equal moieties between them (a) *In witness &c.*

No. CXXIV.
*Award under a
Judge's Order.*

No. CXXV.

Award under a Submission by Order of the Lord Chancellor.

No. CXXV.
*Under Lord
Chancellor's
Order.*

*To all &c. (see last precedent) Whereas by a certain order made by the Lord High Chancellor of Great Britain on the day of in the year of &c. in a certain cause depending in the High Court of Chancery wherein A. B. of &c. was plaintiff and C. D. of &c. defendant it was ordered by consent of the parties and their counsel &c. among other things that the settlement of the accounts and all other matters in difference between the said parties should be referred to me the said (Arbitrator) Now know ye that I the said (A.) having taken upon myself (see last precedent) do hereby award adjudge and declare the balance due from the said C. D. to the said A. B. upon such settlement to be the sum of £ which said sum I do award order and direct that the said C. D. do and shall pay unto the said A. B. at &c. And I do further award order adjudge and determine that the said A. B. shall within days after the payment of the said sum of £ at the costs and expense of the said C. D. execute such a good and effectual conveyance and assurance of the messuage or tenement in the occupation of the said A. B. situate, &c. to and for the use of the said C. D. or as he shall direct and that he the said C. D. shall upon the execution of the said conveyance pay unto the said A. B. the sum of £ as a consideration for the same And lastly I do award &c. that the costs charges and expenses of the suit and reference and also of this my award which I do adjudge to amount in the whole to the sum of £ shall be borne and paid by the said parties in difference in equal moieties and proportions *In witness &c.**

Recital of Lord
Chancellor's
order.

Award.

C. D. to pay
balance due to
A. B.

A. B. to execute
conveyance.

Costs to be
borne equally
by the parties.

(a) Where it is ordered by the rule of court, that the costs of the cause shall abide the event of the award, the arbitrator has no occasion to take notice of any costs but the costs of reference.

No. CXXVI.

*Award by an
Umpire.*

No. CXXVI.

*Award by an Umpire.*Recital of cross
bonds to abide
an award of
arbitrators,*To all to whom these Presents shall come I (umpire) of &c.*
send greeting *Whereas* A. B. of &c. and C. D. of &c. copartnershave mutually entered into and reciprocally executed bonds or
obligations to each other bearing date &c. in the penal sum of

£ conditioned that the said parties should in all things

well and truly stand to abide observe perform fulfil and keep the

award order final end and determination of (*arbitrators*) arbi-

trators indifferently chosen by the said parties of and concerning

all and all manner of action and actions cause and causes of

action suits bills bonds specialties [covenants contracts promises

accounts reckonings sums of money judgments executions extents

quarrels controversies trespasses] damages and demands what-

soever both in law and equity committed or depending by or

between the said parties so as the said award should be made on

Or of umpire.

or before the day of *But* if the said arbitrators

should not make such their award of and concerning the said

differences by the time aforesaid then if the said parties should

in all things well and truly stand to abide observe perform fulfil

and keep the award order arbitrament umpirage final end and

determination of such person as should hereafter be chosen

by the said arbitrators so as the said umpire should make his

award or umpirage of and concerning the same on or before

Appointment of
umpire.the day of *And whereas* the said (A.) met upon the

said arbitration and did not make their award by the time

limited in and by the conditions of the said bonds and in pur-

sueance thereof have chosen and appointed me as umpire to

settle and determine the matters in difference between the said

Award.

parties *Now Know ye* That I the said (*umpire*) the umpire

named and chosen as aforesaid having taken upon me the burthen

of the said arbitration and having heard &c. of and concerning

the said disputes and differences between them and fully con-

sidered the same do make this my award and umpirage in

manner following that is to say I do award and order that the

said A. B. his executors or administrators do and shall on the

A. B. to pay
costs of a suit
commenced by
him ;

day of between the hours of &c. pay or cause to

be paid unto the said C. D. the sum of £ in full for his

damages and costs in a certain action lately commenced by him

the said A. B. against the said C. D. and also for the costs of
and occasioned by this reference *And* upon payment of the
said sum of £ I do award &c. (*mutual releases*).
In witness &c.

No. CXXVI.
*Award by an
Umpire.*
And costs of re-
ference

Award by a Commissioner under an Inclosure Act, see post,
AWARDS.

Arbitration Clause in Deeds, see INDEX TO PRECEDENTS.

ARTICLES.

Articles of Clerkship, see ante, APPRENTICESHIP.

Articles of Copartnership, see post, COPARTNERSHIP.

Articles for a Marriage Settlement, see ante, AGREEMENTS.

ASSIGNMENTS.

- | | |
|--|---------------------------------------|
| 1. <i>Definition of an Assignment.</i> | 4. <i>What assignable by Statute.</i> |
| 2. <i>Leases, Annuities, &c. assignable.</i> | 5. <i>How made.</i> |
| 3. <i>Offices of Trust not assignable.</i> | 6. <i>Stamp.</i> |

SECT. 1. An assignment is the transferring or setting over to another the interest a man hath in a thing, (more particularly the transferring to another that particular interest which a man hath in any property wherein a third person not a party to the assignment has some right or interest).

Definition of an assignment.

2. Assignments are usually made of leases and estates for years. There may also be an assignment of an annuity or rent-charge, but judgments, statutes and *choses in action*, as debts, bonds, &c., are not assignable by the common law, 10 Co. 48; Roll. Abr. 376. But

Leases, annuities, &c. assignable.

<i>Assignments.</i>	courts of law will allow the assignee to sue in the name of the assignor, <i>Winch v. Keeley</i> , 1 T. R. 619. They may likewise be assigned in equity. So likewise, although by the common law no possibility or contingent interest could be assigned over to another, yet they are assignable in equity for a valuable consideration, <i>Wright v. Wright</i> , 1 Ves. 409; 1 Fonbl. Treat. of Eq. 103; but see 8 & 9 Vict. c. 106, s. 6.
Offices of trust &c. not assignable.	3. An office of trust cannot be assigned, Dy. 7; nor a personal trust, as that of guardian or trustee, Vaugh. 180; nor the full pay of an officer, <i>Flarty v. Odium</i> , 3 T. R. 681. So likewise the assignment of the half-pay of an officer is bad in equity as well as at law, <i>Stone v. Littledale</i> , 2 Anst. 533.
What assignable by statute, or otherwise.	4. Some things, not assignable in their nature, are made so by statute; as promissory notes, by 3 & 4 Anne, c. 9; bail bonds by sheriffs, 4 & 5 Anne, c. 16; certificates for taking and prosecuting felons to conviction, 10 & 11 Will. 3, c. 23; but see 7 Geo. 4, c. 64. The assignment of wages, half-pay, &c., by petty officers and seamen in the Royal Navy, is prohibited by 11 Geo. 4 & 1 Will. 4, c. 20, s. 47; see 2 & 3 Vict. c. 51.
How made.	5. Since the Statute of Frauds, it is requisite to the validity of an assignment of an estate in land that it should be in writing.
.	6. By the 13 & 14 Vict. c. 97, the <i>ad valorem</i> duty is chargeable on assignments as on any other conveyance; but where the assignment is not otherwise charged, or is not exempt from all duty, then the duty of 1l. 15s., and the further progressive duty of 10s. is charged.

No. CXXVII.

No. CXXVII.	<i>Assignment of an Agreement for the Purchase of an Estate.</i>
<i>Agreement.</i>	<i>This Indenture made &c. Between (assignor) of &c. of the</i>
Recital of articles.	one part and (assignee) of &c. of the other part <i>Whereas</i> by articles of agreement bearing date the day of last and made or expressed to be made between (vendor) of &c. of the one part and the said (assignor) of the other part It is witnessed that the said (V.) did for the considerations therein mentioned agree to sell unto the said (assignor) all those mesuages &c. <i>Now this Indenture witnesseth</i> That in consideration of the sum of £ to the said (assignor) well and truly paid by the said (assignee) the receipt of which is hereby acknowledged He the said (assignor) Doth assign <i>All those</i> the said recited articles of agreement and all the estate right and title benefit advantage property claim and demand whatsoever of him the said (assignor) of in or to the same <i>To Have and to</i>
Testatum.	

Hold the said articles and all benefit and advantage thereof in as full ample and beneficial a manner as he the said (*assignor*) could or might have been entitled to the same if these presents had not been made *And* the said (*assignor*) doth hereby make nominate and constitute the said (*assignee*) his executors &c. his true and lawful attorney and attornies irrevocable in his name but for the sole use and benefit of him the said (*assignee*) to do perform and execute every act matter and thing whatsoever requisite and necessary for carrying the said articles of agreement into full effect *Provided nevertheless* and it is hereby declared and agreed by and between the said parties hereto that the said (*assignee*) shall and will at all times indemnify and save harmless the said (*assignor*) his heirs executors administrators and assigns from and against all costs charges and damages which he they or any of them shall or may pay sustain or be put unto by reason of any action or suit in pursuance of the power hereinbefore given *And* the said (*assignor*) for himself his heirs executors and administrators doth hereby covenant with and to the said (*assignee*) in manner following that is to say That for and notwithstanding any matter or thing by him done omitted or knowingly suffered the said in part recited agreement is a good and valid agreement and not in anywise forfeited surrendered or otherwise made void *And* that he the said (*assignor*) hath full power and lawful authority to assign and assure the same *And also* that he the said (*assignor*) his heirs executors and administrators shall and will at any time hereafter upon reasonable request and at the costs and charges of the said (*assignee*) do and perform all such further and other acts for the better and more fully and satisfactorily assigning and assuring the said agreement as by the said (*assignee*) his heirs &c. or by his or their counsel in the law shall be advised and required *And* the said (*assignee*) for himself his heirs executors and administrators doth hereby covenant &c. with the said (*assignor*) his heirs &c. That he the said (*assignee*) shall and will well and truly pay perform observe and keep all and every the sum or sums of money covenants agreements provisoes and conditions respectively which are mentioned or contained in the said in part recited articles *In witness &c.*

No. CXXXVII.
Agreement.

Habendum.
Power of attorney.

Indemnity to assignor.

Agreement valid.

Further assurance.

Assignee to perform covenants of the agreement.



No. CXXVIII.

No. CXXVIII.

Agreement.*Assignment of an Agreement for the Sale of Timber for securing the Payment of Debts (by Indorsement).*

Assignment.

Habendum.

Upon trust.

Know all Men That I (assignor) of &c. for the further and better securing the payment of all the debts mentioned in the schedule hereunto annexed do hereby grant and assign unto (assignee) of &c. his executors &c. All those the within written articles and all monies hereafter due or to be paid thereon and the full benefit profit and advantage thereof from and after the day of last past To Have and to Hold the said articles and all the said monies due and payable thereon and the full benefit profit and advantage thereof unto the said (assignee) his executors administrators and assigns Upon Trust That he the said (assignor) do and shall receive and take of and from the within-named (vendor) all such sum and sums of money as shall become due and payable by force and virtue of the within written articles and pay and apply the same money in discharge of the costs and charges of the trusts hereby created and after payment of the same in Trust to pay and discharge the principal money and interest due to the several persons in the schedule hereunto annexed or so far as the same will extend in rateable proportions And for the purposes aforesaid I the said (assignor) Have made &c. (Power of Attorney, see last precedent) to ask demand sue for recover and receive all such sum and sums &c. which shall grow due and payable &c. and to make do and execute all such other acts and deeds for the better enabling the said (assignee) his executors &c. to recover and receive all such sums &c. as he the said (assignee) his &c. or his counsel in the law shall advise or require I the said (assignor) agreeing to ratify and confirm whatsoever shall be lawfully done in and about the premises In witness &c.



No. CXXIX.

No. CXXIX.

*Annuity.**Assignment of an Annuity by a Wife to Executors for discharging her Husband's Debt to the Testator.*Recital of grant
of annuity to
wife.

This Indenture made &c. Between (Assignor) wife of (Husband) of &c. of the first part the said (H.) of the second part and (Executors) of the third part Whereas I. S. late of &c. de-

ceased duly made and published his last will and testament in writing bearing date &c. and did thereby bequeath unto the said (A.) during the term of her natural life one annuity or clear yearly sum of £ of lawful &c. for her sole and separate use payable quarterly free and clear of the legacy duty and all other taxes and deductions whatsoever And the said testator appointed the said (E.) executors of his will *And whereas* the said I. S. departed this life on or about the day of without having altered or revoked his said will and shortly after his decease the said will was duly proved by the said (E.) in the Consistory Court of *And whereas* the said (H.) was indebted to the said I. S. at the time of his decease in the principal sum of £ secured to the said I. S. by the bond of the said (H.) dated the day of in the penal sum of £ *And whereas* by bond under the hand and seal of the said (H.) bearing date the &c. the said (H.) became bound unto the said (E.) as executors aforesaid in the sum of £ with a condition thereunder written by which after reciting the said bond dated the &c. and the will and death of the said I. S. And after reciting that all interest due on the said sum of £ had been duly paid up to the date of the now reciting bond but that it was not in the power of him the said (H.) to pay off the said sum of £ in any other way than by instalments after the rate of £ *per annum* with interest they the said (E.) had agreed to accept payment thereof in that way *It is declared* that if the said (H.) his heirs executors or administrators should pay unto the said (E.) or unto the survivors or survivor of them his or her executors or administrators the sum of £ with interest for the same after the rate of £ for every 100*l.* by the year by instalments on the days and times and in manner therein mentioned that is to say the sum of £ with half a year's interest on the said sum of £ on the day of thence next ensuing the further sum of £ with half a year's interest on the then remaining part of the said principal sum of £ on &c. *And also* should on the day of and the day of in each succeeding year by half-yearly payment pay the like sum then the said bond or obligation shall be void *And whereas* the payment of the said sum of £ and interest by instalments as hereinbefore mentioned was further secured to the said (E.) as executors as aforesaid by a warrant of attorney under the hand and seal of the said (H.) bearing date &c. for confessing judgment against him in an action of debt in the

No. CXXIX.
Annuity.

Death of testator.

Debt from husband to testator.

Bond from husband to executors.

Executors agree to be paid by instalments.

Judgment entered up on warrant of attorney.

No. CXXIX.
Annuity.

Agreement on
 the part of wife
 to assign her
 annuity to ex-
 ecutors.

Testatum.

Habendum.

To executors.

Upon trust.

Court of Common Pleas at Westminster at the suit of the said (E.) for the said sum of £ *And whereas* no part of the said sum of £ hath been paid by the said (H.) pursuant to the condition in the said recited bond of day and in consequence of such default in payment the said (E.) entered up judgment pursuant to the said warrant of attorney for the sum of £ and costs of suit but no execution hath been sued out on the said judgment *And whereas* all interest hath been paid up to the day of the date of these presents *And whereas* the said (H.) being at present unable to pay any part of the said principal sum of £ the said (A.) at his request hath agreed to transfer the said annuity or yearly sum of £ bequeathed to her as aforesaid unto the said (E.) Upon such trusts as are hereinafter declared for securing the payment of the said sum of £ and the interest thereof by instalments And in consideration thereof the said (E.) have agreed to enter into the covenants hereinafter contained for postponing the enforcement of the immediate payment of the said sum of £ in manner hereinafter mentioned *Now this Indenture witnesseth* That in pursuance of the said recited agreement on the part of the said (A.) the said (A.) at the request and by the direction of the said (H.) testified by his being a party to and executing these presents *Doth* grant &c. unto the said (E.) *All that* the said annuity or yearly sum of £ in and by the said recited will of the said I. S. deceased given and bequeathed to the said (A.) as aforesaid Together with all powers remedies and means whatsoever requisite and necessary for recovering receiving and giving effectual receipts releases and discharges for the same annuity and every part thereof And all the right title and interest trust property claim and demand whatsoever of her the said (A.) in to and out of the same annuity or yearly sum of £ and all arrears and growing payments thereof *To Have Hold* receive perceive take and enjoy the said annuity or yearly sum of £ and the arrears and growing payments thereof Together with the said powers remedies and means for recovering and enforcing payments thereof as aforesaid unto the said (E.) their executors administrators and assigns henceforth during the life of the said (A.) *Nevertheless* upon and for the trusts intents and purposes hereinafter expressed and declared of and concerning the same that is to say *Upon Trust* that they the said (E.) or the survivors or survivor of them or the executors administrators or assigns of such survivor do and shall from time to time when and as the said annuity or yearly sum

of £ shall become payable receive and retain the same annuity and every part thereof And shall and do yearly and every year until the whole of the principal sum of £ and the interest upon or in respect of the same shall be fully paid and satisfied [in case the said (A.) should so long live] by and out of the said annuity or yearly sum of £ pay and satisfy unto the said personal representatives or representative for the time being of the said I. S. deceased the interest which at the end of each half year shall be due and payable upon the said sum of £ or upon so much thereof as shall from time to time be remaining unpaid The first half-yearly payment of interest to be made at the end of six calendar months to be computed from the day of last past And also at the end of each succeeding half year by and out out of the said annuity or yearly sum of £ pay and satisfy unto the personal representatives or representative for the time being of the said I. S. deceased the sum of £ in or towards the payment or satisfaction of so much of the said sum of £ by way of half-yearly instalments And subject and without prejudice to the payments aforesaid *Upon Trust* that they the said (E.) their executors administrators and assigns shall and do stand possessed of and interested in the said annuity or yearly sum of £ or so much thereof as shall not be disposed of under the trusts aforesaid *In Trust* for the said (A.) and her assigns And it is hereby agreed and declared between and by the said parties hereto that the receipt or receipts of the said (E.) or of the survivors or survivor of them or the executors administrators or assigns of such survivor shall be a good and effectual discharge for the said annuity or yearly sum of £ unto the person or persons paying the same for as much thereof as in such receipt or receipts shall be expressed or acknowledged to be received and that the person or persons paying the said annuity or yearly sum or any part thereof and taking such a receipt or receipts for the same as aforesaid shall not be bound or obliged to see to the application or be anywise answerable or accountable for the loss misapplication or nonapplication of the money which in such receipt or receipts shall be expressed to be received or any part thereof And in consideration of the premises the said (E.) for themselves severally and for their respective heirs executors and administrators do hereby covenant with the said (H.) his heirs executors and administrators and every of them That they the said (E.) or any of them or any of their heirs executors administrators

No. CXXIX.

Annuity.

To pay principal, debt and interest by annual instalments.

To pay surplus to assignor.

Trustees to give receipts.

Covenants from the executors.

No. CXXIX.

*Annuity.*Not to put bond
in forceuntil after the
death of as-
signor.

or assigns or the executors administrators or assigns of the said I. S. deceased shall not nor will at any time during the life of the said (A.) put the said bonds or either of them in force or bring commence or prosecute any suit or other proceeding at law or in equity against the said (H.) his heirs executors or administrators for recovering or compelling payment of the said sum of £ or any part thereof or the interest thereof or upon or by virtue of the said judgment so entered up against the said (H.) in pursuance of the said warrant of attorney as aforesaid *Provided always* and it is hereby declared and agreed by and between the parties hereto that in case the said (A.) shall happen to die before the whole of the said principal sum of £ and all interest upon or in respect of the same shall be fully paid and satisfied Then and in such case it shall be lawful for the said (E.) their executors administrators or assigns or any of them or the executors for the time being of the said I. S. at any time or times after the death of the said (A.) to enforce the said recited bonds or either of them and bring commence and prosecute any action suit or other proceeding at law or in equity against the said (H.) his executors or administrators for recovering and enforcing payment of the said sum of £ or any part thereof or the interest thereof *In witness &c.*



No. CXXX.

*Annuity by
Indorsement.*Recital that all
arrears are paid.

No. CXXX.

Assignment of an Annuity by Indorsement.

To all to whom these Presents shall come (assignor) of &c. sendeth greeting *Whereas* all arrears of the within mentioned annuity yearly rent-charge or annual sum of £ by the within written indenture granted to him the said (assignor) his executors administrators and assigns during the term of his natural life as within mentioned have been fully paid and satisfied to the said (assignor) up to the day of the date hereof *Now know ye* That in consideration of the sum of £ of &c. by the said (assignee) to the said (assignor) well and truly paid the receipt of which is hereby acknowledged he the said (assignor) doth grant and assign unto the said (assignee) his executors and administrators *All* the said annuity or yearly sum of £ payable and issuing out of the messuage and premises within mentioned *And* also all the estate right interest claim and

demand whatsoever of him the said (*assignor*) of in and to &c. *To Have* &c. the said annuity &c. unto the said (*assignee*) his executors &c. during the term of the natural life of the said (*assignor*) with full power and authority for him the said (*assignee*) his executors &c. to recover and receive the same in as large ample and beneficial a manner to all intents and purposes as he the said (*assignor*) might could should or ought to have enjoyed the same if these presents had not been made *And* the said (*assignor*) for himself &c. doth hereby covenant promise and agree &c. that he the said (*assignor*) hath good right and full power to assign the said annuity of &c. *And also* that he hath not heretofore charged discharged or incumbered the said annuity or yearly sum hereby assigned or intended so to be *And also* that he the said (*assignee*) his executors &c. shall and lawfully may peaceably and quietly have hold receive and enjoy the said annuity or rent-charge of £ to and for the proper use and benefit of him the said (*assignee*) his executors &c. without any let suit trouble hinderance molestation or interruption whatsoever of from or by him the said (*assignor*) his executors &c. or any other person or persons whatsoever and that free and clear and freely clearly and absolutely discharged and exonerated from all charges and incumbrances whatsoever *And* further that he the said (*assignor*) will from time to time during the life of the said (*assignor*) at the request of the said (*assignee*) but at the cost of the said (*assignor*) do all such acts for further assigning and assuring the said annuity to the said (*assignee*) his executors administrators or assigns in manner aforesaid as by the said (*assignee*) his executors administrators or assigns shall be reasonably required *In witness* &c.

No. CXXX.
*Annuity by
Indorsement.*

Habendum.

Covenants
from assignor.
Good right to
assign.

Quiet enjoy-
ment.

Free from in-
cumbrances.

No. CXXXI.

Assignment of Exchequer Annuities.

No. CXXXI.
*Exchequer
Annuities.*

Know all Men by these Presents That for and in consideration of the sum of £ to me (*assignor*) of &c. in hand well and truly paid by (*assignee*) of &c. the receipt whereof is hereby acknowledged I the said (*assignor*) *Have* granted bargained sold &c. and by these presents *Do* grant &c. unto the said (*assignee*) of &c. the several orders bearing date &c. made unto and in the name of me the said (*assignor*) by virtue and in

No. CXXXI.

*Exchequer
Annuities.*

pursuance of an act of parliament passed in the year &c. entitled &c. in consideration of the respective sums therein paid by me into the receipt of her Majesty's Exchequer for the same which orders are of the several numbers and for the several annuities or yearly sums payable by four equal quarterly payments for the term of years to be computed from the &c. as follows viz. one number (*set out the several numbers*) Together with the several tallies made and struck for the purchase-money of the said respective annuities *And* also the said annuities or yearly sums payable by or upon the said orders respectively during the residue of the said term of years respectively and all the estate &c. of me the said (*assignor*) of and in the said several orders tallies and annuities aforesaid *To Have* &c. the said several annuities and every of them and every part thereof unto the said (*assignee*) his executors administrators and assigns to his and their proper use and benefit for and during the residue &c. of the said term of years yet to come and unexpired in as ample and beneficial a manner as the said (*assignor*) could have enjoyed the same if these presents had not been made free and clear from all charges and incumbrances made done or committed by me the said (*assignor*) or any other person or persons whomsoever *In witness* &c.



No. CXXXII.

*Articles of
Clerkship.*

No. CXXXII.

Assignment of Articles of Clerkship to surviving Partner.

Recital of articles of clerkship.

This Indenture &c. Between E. F. of &c. spinster of the first part W. D. the younger of &c. of the second part W. D. the elder of &c. merchant and father of the said W. D. the younger of the third part and G. F. of &c. gentleman one of the attornies of her Majesty's Courts of Queen's Bench and Common Pleas at Westminster and brother and late copartner of W. F. deceased of the fourth part *Whereas* by an indenture of clerkship bearing date the day of and made between the said W. F. deceased late one of the attornies &c. as aforesaid of the one part and the said W. D. the elder and W. D. the younger of the other part the said W. D. the younger with the consent and approbation of his said father testified as is therein mentioned did put place and bind himself clerk to the said W. F. to serve him in the practice of an attorney at law and solicitor in chancery

No. CXXXII.

*Articles of
Clerkship.*

from the day of the date of the said indenture for and during the term of five years from thence next ensuing and under and subject to such covenants articles and agreements as in the said indenture mentioned *And Whereas* the said W. F. departed this life on or about the day of last past having duly made and published his last will and testament in writing bearing date the day of the same month of and thereby named and appointed his sister the said E. F. his executrix of his said will who on or about the day of the said month duly proved the same in the Prerogative Court of the Archbishop of Canterbury *Now this Indenture witnesseth* That the said E. F. for divers good causes and considerations her thereunto moving at the desire of the said W. D. the younger and with the consent and approbation of the said W. D. the elder testified by their severally executing these presents *Doth* assign unto the said G. F. his executors administrators and assigns as well the said recited indenture of clerkship and all benefit thereof as also all the right interest service profit advantage claim and demand whatsoever and howsoever to arise or be had from henceforth of the service of the said W. D. the younger during the now residue of the said term of five years by force and virtue of the said recited indenture or otherwise howsoever subject nevertheless to the several covenants articles and agreements mentioned and contained in the said recited indenture on the part of the said W. F. his executors administrators or assigns to be done and performed *To Have and to Hold* the said indenture of clerkship and all benefit and advantage to arise therefrom unto the said G. F. his executors administrators and assigns from henceforth for and during all the residue of the said term of five years now to come and unexpired in as ample and beneficial a manner to all intents and purposes as she the said E. F. can or may assign the same but nevertheless subject as is hereinbefore mentioned *And* the said W. D. the younger doth hereby covenant and agree with the said G. F. his executors and administrators that he the said W. D. &c. shall and will well and truly serve the said G. F. during the residue of the said term of five years as such clerk as aforesaid and truly observe perform and keep all and singular the covenants articles and agreements in the said indenture of clerkship mentioned and on his part and behalf to be done and performed *In witness &c.*



No. CXXXIII.

By Indorsement.

No. CXXXIII.

Assignment of Articles of Clerkship by Indorsement.

Know all Men by these Presents That the said within named parties having mutually agreed to vacate the within-written contract the within-named (*assignor*) at the request and by and with the approbation of the within-named (*clerk's father*) and (*clerk*) testified by their severally signing and sealing these presents *Hath* assigned and turned over the said (*C.*) to (*assignee*) of &c. gentleman to serve him as his clerk under the conditions within-mentioned for the remainder of the within-mentioned term of years *And* the said (*assignee*) in consideration of £

Assignment to
new principal.

in hand well and truly paid by the said (*assignor* or *clerk's father, or otherwise as the case may be*) *Hath* accepted taken and received him the within-named (*C.*) to continue and be with him as his clerk during the remainder of the within-mentioned term of years under the conditions in the within-written

Release from
assignor, father
and clerk.

articles mentioned *And* in consideration of the premises they the said (*assignor, father and clerk*) do hereby for themselves and their several executors administrators and assigns mutually release each other their executors and administrators of and from the within-written articles and the performance of all the covenants and agreements therein contained. *In witness &c.*

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Assignment by Assignees and Bankrupt, see post,
BANKRUPTCY.

No. CXXXIV.

No. CXXXIV.

*Bill of Sale.**Assignment of Bill of Sale of Goods.*

Stamp.

Obs. 1. As to the nature of a bill of sale, see **BILLS OF SALE.**

2. An *ad valorem* stamp on the consideration money.

Recital of sale
to vendor.

To all to whom these Presents shall come (*Vendor*) of &c. sendeth greeting *Whereas* (*V.*) of &c. in and by his deed or bill of sale under his hand bearing date &c. did for the consideration therein expressed bargain sell and deliver unto me the said (*assignor*) my executors administrators and assigns all and every the goods implements and wares remaining and being &c. as in the

schedule or inventory to the same deed or bill of sale annexed are more particularly expressed *Now know ye* That in consideration of the sum of £ in hand to me well and truly paid by (*assignee*) of &c. the receipt &c. I the said (*assignor*) *Do* grant assign transfer and set over and by these presents in plain and open market *All* and every the goods wares and implements in the above-recited bill of sale and in the schedule thereunto annexed mentioned and hereby bargained and sold or expressed to be so as aforesaid *To have and to hold* unto the said (*assignee*) his executors administrators and assigns all and every the goods wares and implements in the above-recited bill of sale and schedule mentioned and contained to and for his and their own benefit and as his and their proper goods and chattels from henceforth for ever *And* I the said (*assignor*) do hereby for myself my executors &c. covenant &c. with the said (*assignee*) his &c. That the said deed or bill of sale is a good and valid instrument and that the premises hereby assigned or otherwise assured or intended so to be with the appurtenants are and shall remain and continue unto the said (*assignor*) his executors administrators and assigns free and clear of and from all former and other rights titles charges liens and incumbrances whatsoever done committed or suffered by the said (*assignor*) and the said (*V.*) or any other person whatsoever.

No. CXXXIV.

Bill of Sale.

Testatum.

Habendum.

Free from incumbrances.

In witness &c.

No. CXXXV.

Assignment of a Conditional Bill of Sale.

No. CXXXV.

Bill of Sale.

To all to whom these Presents shall come I (*assignor*) of &c. send greeting *Whereas* (*V.*) of &c. in and by &c. did &c. (see *last precedent*) Subject nevertheless to a proviso or condition for making void the same as in the within-written bill of sale is contained in that behalf *Now know ye* That &c. in consideration of &c. I the said (*assignor*) *Do* grant &c. unto the said (*assignee*) all &c. *To have* &c. as fully and beneficially as I the said (*assignor*) might have held and enjoyed the same Subject nevertheless to the proviso for redemption as aforesaid *And* I the said (*assignor*) do hereby for myself &c. covenant with the said (*assignee*) his &c. That the said debt or sum of £ is still due and owing *And* that I the said (*assignor*) have not done or suffered and shall not nor will at any time hereafter do or suffer

Testatum.

Habendum.

Covenants from assignor.

Debt is subsisting.

No. CXXXV. any act whereby the said (*assignee*) his executors &c. shall be prevented or hindered from recovering the said debt or sum of £ hereby assigned or any part thereof *And also* that if default shall happen to be made in payment of the said sum of £ and interest thereof I the said (*assignor*) my executors &c. shall and will at the request costs and charges of the said (*assignee*) make do and execute all such other acts deeds and things for the better enabling the said (*assignee*) his &c. to recover and receive the said sum of £ as by the said (*assignee*) his executors &c. or his or their counsel in the law shall be reasonably advised or required *And* the said (*assignee*) doth hereby for himself his executors &c. covenant &c. with the said (*assignor*) his executors &c. That he the said (*assignor*) his &c. shall and will at all times hereafter save harmless and indemnified the said (*assignor*) his executors &c. of from and against all costs charges damages and expenses whatsoever which shall or may fall upon or become payable by the said (*assignor*) his executors or administrators for or by reason of any action or suit or other legal or equitable proceeding which shall or may be brought or prosecuted in the name or names of the said (*assignor*) his &c. by virtue of these presents or otherwise *In witness &c.*

Bill of Sale.

No act to incumber.

Further assurance.

Indemnity from assignee.

ASSIGNMENTS OF BONDS.

- | | |
|---------------------------------|-----------------------|
| 1. Bonds not assignable at Law. | 3. Notice to Obligor. |
| 2. Bond deemed satisfied, when. | 4. Stamp. |

Bonds not assignable at law.

SECT. 1. Bonds, being *choses in action*, so called because they cannot be reduced into possession except in due course of law, are not properly assignable by the common law, 1 Inst. 232; therefore, if on an assignment an action is brought, it must be brought in the name of the obligee, and for the same reason a power of attorney and a covenant from the obligee not to release the debt or revoke his power must form a part of every such deed.

Bond deemed satisfied, when.

2. No assignment of a bond should be taken, unless there be evidence that the debt is still subsisting, as the courts have made it a rule to direct the jury to find a bond satisfied after a lapse of twenty years, without demand or acknowledgment, 1 Ves. 51. This is confirmed by 3 & 4 Will. 4, c. 42, s. 3, which provides that no action of

debt or covenant shall be brought upon any bond or other specialty but within twenty years. *Assignments of Bonds.*

3. On an assignment of a bond, notice must be given to the obligor, otherwise payment by him to the obligee will be good. As to the assignment of bonds and other *choses in action*, see further ASSIGNMENTS, Pref. sect. 2. Notice to obligor.

4. An *ad valorem* duty on the consideration money, see Pref. sect. 4. Stamp.



No. CXXXVI.

Assignment of a Bond.

No. CXXXVI.

Bond.

This Indenture made &c. Between (*assignor*) of &c. of the one part and (*assignee*) of &c. of the other part *Whereas* (*obligor*) of &c. by a certain bond or obligation under his hand and seal duly executed bearing date on or about the day of became bound to the said (*assignor*) in the penal sum of £ of &c with a condition thereunder written to be void on payment by said (*obligor*) unto the said (*assignor*) his executors administrators or assigns of the full sum of £ *And* *whereas* the said (*assignee*) hath agreed to pay to the said (*assignor*) the sum of £ upon having an assignment made to him the said (*assignee*) of the said in part recited bond and all principal and interest due and to become due thereon in manner as hereinafter mentioned *Now this Indenture witnesseth* That in consideration of the sum of £ of &c. to the said (*assignor*) by the said (*assignee*) well and truly paid at &c. He the said (*assignor*) *Doth* grant &c. *All that* the said in part recited bond or obligation and all the right title benefit advantage claim and demand whatsoever of him the said (*assignor*) of and in the same *To have* &c. the said bond or obligation and all monies now or hereafter to become due and payable thereupon or by force or virtue thereof unto the said (*assignee*) his executors administrators and assigns to the only proper use and behoof of the said (*assignee*) &c. for ever *And* for the considerations aforesaid hath constituted and appointed and by &c. doth constitute &c. the said (*assignee*) his executors administrators and assigns his true and lawful attorney and attornies in the name or names of the said (*assignor*) his executors administrators or assigns to ask demand and receive all and every the sum and sums of money now

Recital of bond.

Agreement to advance money.

Testatum.

Habendum.

Power of attorney.

No. CXXXVI. due or hereafter to become due upon the said bond or obligation and on nonpayment thereof or any part thereof Then in the name of the said (*assignor*) his executors &c. but at the proper costs and charges of the said (*assignee*) his executors administrators or assigns to commence and prosecute with effect any actions or suits against the said (*obligor*) his executors administrators or assigns until full satisfaction and payment of the said sum of £

Bond. And on receipt thereof to cancel or deliver up the said bond or obligation or to make and give good and sufficient releases and discharges for the sum or sums of money so received and finally in his name to do perform and execute all such further and other acts deeds matters and things touching the premises as the said (*assignee*) his executors &c. shall deem requisite He the said (*assignor*) for himself &c. hereby ratifying and confirming whatsoever the said (*assignee*) his executors &c. shall lawfully do in and about the premises And he the said (*assignor*) for himself his executors administrators and assigns doth hereby covenant promise and agree with and to the said (*assignee*) his executors &c. That the said bond at the time of the sealing and delivery of these presents is in full force and valid and effectual in the law and not assigned released vacated cancelled or otherwise made void And also that he the said (*assignor*) his executors administrators or assigns shall not nor will at any time hereafter receive the said monies due or to become due on the said bond or obligation or any part thereof nor revoke invalidate hinder or make void these presents or any authority or power hereby given without the licence or consent of the said (*assignee*) his executors &c. first had and obtained in writing for that purpose

Covenants. And the said (*assignee*) for himself his executors &c. doth covenant &c. with the said (*assignor*) his &c. That he the said (*assignee*) his &c. shall and will at all times indemnify the said (*assignor*) his &c. of from and against all costs charges expenses and damages which he or they or any of them shall pay sustain or be put unto for or by reason or on account of any proceedings to be had either at law or in equity on account of the premises by virtue or means of these presents so as the same do not arise or accrue through the collusion or act of the said (*assignor*) his &c.

Bond still subsisting. In witness &c.

Assignor not to receive money, nor revoke power.

Assignee to indemnify assignor.

CXXXVII.

No CXXXVII.

*Assignment of a Bond and Judgment by a Husband and a Wife
as a Security for a Debt.*

Bond and Judgment.

Obs. Bonds being *choses in action*, a husband has not the power of assigning them; he has only the power of reducing them into possession during his life. If he assign them, the assignee standing in his place may, during his life, sue in the name of the husband; but if he die before the assignee has reduced them into possession, the right of action will survive to the wife, 1 *Rop. Hus. & W.* 225; and equity will not support the husband's assignment of a wife's bond, although made for a valuable consideration, *Burnet v. Kinaston*, 2 *Freem.* 239; *S. C.* 2 *Vern.* 401; *Prec. in Cha.* 121; *Parker* (in *Prec. Cha.* 412, *nom. Packer*) *v. Wyndham*, *Gilb. Rep. Eq.* 98.

To all to whom these Presents shall come (assignor) of &c. and S. his wife late (maiden name) of &c. spinster send greeting Whereas (obligor) of &c. in or by one bond &c. became bound unto the said (wife's maiden name) before her intermarriage with the said (assignor) in the penal sum of £ conditioned for the payment of £ and interest at a day long since past (a) And whereas default was made in payment of the said sum of £ and interest on the day mentioned in the condition of the said in part recited bond and the said (assignor) did in term last past obtain a judgment in her Majesty's Court at Westminster in an action of debt on the said bond for the sum of £ besides costs of suit against him the said (obligor) as by the record of the judgment entered up in the same court reference being thereto had will more fully appear And whereas the said (assignor) having occasion to borrow the sum of £ hath requested the said (assignee) to advance the same and he hath agreed so to do on having the said in part recited bond or obligation Together with the said (b) judgment assigned to him as a security for the repayment thereof Now know ye That in

Recital of bond.

Testatum.

(a) If it be a judgment obtained on a warrant of attorney, say, "*And whereas for the better securing the payment of the said sum of £ the said (obligor) executed a warrant of attorney bearing even date with the said bond authorizing certain attornies therein named to confess judgment thereupon in her Majesty's Court of And whereas judgment was confessed and entered on record of the said court as of term then next ensuing as by reference thereto will more fully appear.*"

(b) Or, "the said warrant of attorney and judgment."

No. CXXXVII. consideration of &c. to the said (*assignor*) and S. his wife or one of them in hand paid by the &c. the receipt of which the said (*assignor*) and S. his wife do hereby acknowledge and of and from the same do acquit and discharge the said (*assignee*) his executors &c. He the said (*assignor*) and S. his wife do and each of them doth grant &c. unto the said (*assignee*) his executors administrators and assigns *All that* the hereinbefore recited bond or obligation as also the principal and interest thereon secured as aforesaid and all and every other sum or sums of money now due or which at any future time shall become due and payable on the same Together with the said judgment (*a*) so recovered thereupon as aforesaid and all benefit and advantage to be had or derived thereon and all the estate right title interest property claim and demand whatsoever of &c. *To Have* &c. the said bond &c. and the said judgment in all and singular the sum and sums of money thereon secured and hereby assigned and intended so to be unto and for the only use and benefit of him the said (*assignee*) his executors &c. for his and their own proper use in as full and ample a manner to all intents and purposes as they the said (*assignor*) and S. his wife or either of them could or might have held or enjoyed the same had not these presents been made Upon this condition nevertheless and it is the true intent and meaning of these presents that if they the said (*assignor*) and S. his wife or either of them or either of their executors administrators or assigns shall and do well and truly pay or cause to be paid unto the said (*assignee*) his executors administrators or assigns the full sum of £ on the day of next ensuing Then he the said (*assignee*) his executors &c. is or are to deliver up the said bond or obligation and judgment and these presents are to be cancelled and made void anything either at law or in equity herein contained to the contrary thereof in anywise notwithstanding And the said (*assignor*) and S. his wife do hereby constitute the said (*assignee*) &c. his and their true &c. attorney or attornies in their names or in the names of their executors but for the sole and proper use and benefit of the said (*assignee*) his executors &c. to ask demand and receive all such sum and sums of money as now are or shall become due and payable on the said bond &c. from and after the said day of next ensuing in case the said sum of £ should not then be fully paid and satisfied And upon nonpayment thereof or of any part

Bond and Judgment.

Habendum.

Power of attorney.

(a) Or, "so entered up."

thereof to sue and prosecute to effect any execution or executions or other process whatsoever as shall be deemed necessary and expedient for receiving and recovering the same And on payment thereof to deliver up and cancel the said bond and to give discharges for the same and to acknowledge or cause to be acknowledged satisfaction upon the said judgment and to do and act in every thing relating to the same as the said (*assignor*) and S. his wife or either of them might or could have done had not these presents been made He the said (*assignee*) his executors administrators and assigns rendering and paying to them the said (*assignor*) and S. his wife or either of them their or either of their executors administrators or assigns the surplus or remainder of the said money that shall become due and payable to them the said (*assignor*) and S. his wife their executors or either of them on the said bond and which he the said (*assignee*) shall receive thereupon after deducting what shall be justly due and owing to the said (*assignee*) at the time of such receipt and payment And the said (*assignor*) doth hereby for himself his heirs executors and administrators covenant with the said (*assignee*) his executors administrators and assigns that they the said (*assignor*) and S. his wife or either of them or their or either of their executors &c. shall &c. pay &c. And that the said bond &c. (*is still subsisting &c. and for further assurance, as in the two last precedents*).

No. CXXXVII.
Bond and Judgment.

Covenants from the assignor.

To pay debt &c.

Assignment of a Bond and Policy of Insurance to Trustees of a Marriage Settlement, upon the Trusts to be declared by Settlement, see post, SETTLEMENTS.

No. CXXXVIII.

Assignment of Part of the Cargo of a Ship.

No. CXXXVIII.
Cargo.

To all to whom these Presents shall come (assignors) of &c. Whereas there is a cargo or adventure of timber on board the ship lying at called of the burden of tons or thereabouts of which the said (assignors) are part owners And whereas the said (assignee) of &c. hath agreed to pay the sum of £ for one part of the said cargo Now Know ye That in consideration of the sum of £ so paid at or before &c. the receipt whereof is hereby acknowledged They the said (assignors)

Recital of the cargo.

No.
CXXXVIII.
Cargo.

Covenants from
assignors.

Quiet enjoy-
ment.

Free from in-
cumbrances.

Further as-
surance.

Do hereby grant &c. unto the said (*assignee*) executors &c. one full and equal half part of the said cargo on board the said ship and of all the produce proceeds effects gains and advantage in respect thereof and all the right &c. of in and to the same *To Have* &c. unto the said (*assignee*) his executors &c. to his and their own use and as his and their proper goods and chattels for ever And they the said (*assignors*) do jointly and severally covenant &c. with the said (*assignee*) his &c. in manner following that is to say That the said (*assignee*) his &c. shall and may at all times hereafter have take receive and enjoy to his and their own proper use and benefit all and every the produce proceeds effects profit and advantage by and in respect of the said moiety hereby assigned of the said cargo or adventure of timber laden in the said ship without any let suit trouble denial or interruption of from or by the said (*assignors*) their executors &c. And that free and clear of all former bargains sales assignments debts charges and incumbrances whatsoever by them or either of them committed done or suffered *And* that they the said (*assignors*) their executors &c. will at all times hereafter do perform and execute such further acts deeds and things for the better assigning and assuring the said premises hereby sold and assigned unto the said (*assignee*) his &c. and for enabling him and them to demand and receive the same to his and their own proper use and benefit as by him or them or his or their counsel shall be reasonably advised and required *In witness &c.*

No. CXXXIX.
Copyright.

No. CXXXIX.

Assignment of a Copyright.

Obs. 1. By the 54 Geo. 3, c. 156, the author of any book shall have the sole liberty of printing and reprinting the same for the term of twenty-eight years, and if he survive that period, for the residue of his life. By the same statute, c. 56, the property in new and original sculptures, &c. is vested in the proprietor for fourteen years, and if living at the expiration of that period, for a further term of fourteen years. By the 7 Geo. 3, c. 38, s. 7, the property in prints is vested in the proprietor for twenty-eight years; but see the new Copyright Act, 5 & 6 Vict. c. 45, by which the copyright of authors of books is extended to the author's life and seven years, or forty-two years.

2. By the 8 Anne, c. 19, s. 1, an assignment of a copyright must be in writing, attested by two witnesses; and it has been held, that

under this act, a parol assignment will not entitle the assignee to maintain an action on the case for pirating, *Power v. Walker*, 3 M. & S. 7. No. CXXXIX.
Copyright.

This Indenture &c. Between (*Assignor*) of &c. of the one part and (*Publisher*) of &c. of the other part *Whereas* the said (*A.*) hath written a book intituled &c. and hath contracted with the said (*P.*) for the absolute sale of the copyright of the said work for the sum of £ *Now this Indenture witnesseth* That in consideration of the sum of £ to the said (*A.*) well and truly paid by the said (*P.*) He the said (*A.*) *Doth* grant assign and set over *All* that the said book or work intituled &c. and the whole entire and exclusive copyright and all and singular the right title &c. of him the said (*A.*) of and in and to the same *To Have and to Hold* the said book and copyright and all the profit and advantage that shall and may arise by and from the printing and vending the same unto the said (*P.*) his executors administrators and assigns as fully and beneficially and for such time and respective times as the said (*A.*) can or may assign the same *In witness* &c. Recital of contract.

Testatum.

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No. CXL.

Assignment of a Debenture by way of Collateral Security.

No. CXL.
Debenture.

This Indenture made &c. Between (*assignor*) of &c. of the one part and (*assignee*) of &c. of the other part *Whereas* the said (*assignee*) hath lent and advanced to the said (*assignor*) the sum of £ for the repayment of which with interest a certain messuage and tenement and several lands and hereditaments situate &c. were by an indenture of of even date with these presents and made between the said (*assignor*) of the first part the said (*assignee*) of the second part and (*trustee*) of the third part conveyed by the said (*assignor*) unto and to the use of the said (*assignee*) and his heirs by way of security *And whereas* the said (*assignor*) hath a debenture marked No. and signed by the commissioners of her Majesty's Transport Service for the sum of £ which is due and owing to the said (*assignor*) for the service and employ of the ship or vessel called burthen tons or thereabouts of which the said (*assignor*) is the owner *Now this Indenture witnesseth* That for the better securing the payment of the said sum of £ and interest Recital of loan.

Conveyance by lease and release.

Assignor possessed of a debenture.

Testatum.

No. CXL.
Debenture.
 Assignment.

unto the said (*assignee*) his executors &c. He the said (*assignor*) *Hath* granted bargained sold assigned transferred and set over and by &c. *Doth* grant &c. unto the said (*assignee*) his executors administrators and assigns *All that* the said sum of £ so now due and owing from her Majesty's Government to the said (*assignor*) as owing to the said ship and all benefit and advantage to be made of the same by sale or otherwise *Provided always* and the said (*assignee*) doth hereby for himself covenant &c. with the said (*assignor*) That if he the said (*assignor*) shall well &c. pay &c. unto the said (*assignee*) his executors &c. the full sum of £ according to a proviso or covenant on the behalf of the said (*assignor*) to be performed as in the in part recited indenture of lease and release is mentioned and contained Then the assignment hereby made shall cease and be void to all intents and purposes and the said (*assignee*) his executors &c. shall deliver the said debenture safe and uncanceled unto the said (*assignor*) his executors &c. fire and all inevitable accidents excepted *And* the said (*assignor*) doth hereby for himself his executors, administrators and assigns covenant &c. with the said (*assignee*) his executors &c. That it shall and may be lawful to and for the said (*assignee*) his executors &c. at any time after the date of these presents to deliver up the said debenture to any person or persons who shall pay unto him or them the said sum of £ thereupon due or to sell and dispose of the said debenture and all monies thereupon due *And* it is hereby declared and agreed by and between the parties hereto that all monies which shall be received by the said (*assignee*) his executors administrators or assigns upon such delivery selling or disposition as aforesaid of the said debenture shall be received and taken so far as the same monies will extend towards the payment and discharge of such interest and principal monies as shall at the time of such receipt be due upon the said in part recited indenture of mortgage *And* it is hereby declared and agreed that the receipt of the said (*assignee*) his executors administrators or assigns for the purchase money of the premises sold or any part thereof shall effectually discharge the purchaser or purchasers therefrom and from being concerned in the application thereof or being accountable for the misapplication or nonapplication thereof *In witness &c.*

Proviso for making void the assignment.

Power to sell debenture.

Mortgagee's receipt to be a discharge.

Assignment for the Payment of Debts, see post, COMPOSITION.

No. CXLI.

Assignment of a Debt by way of Collateral Security.

No. CXLI.
Debt.

Obs. As to the assignment of debts and other *choses in action*, see Pref. sect. 1.

This Indenture made &c. Between (*assignor*) of &c. of the one part and (*assignee*) of &c. of the other part *Whereas* by an indenture bearing date on or about the day of and made or expressed to be made between A. B. of the first part C. D. of the second part and the said (*assignor*) of the third part all the book debts and sums of money then and thenceforth to become due in respect of a certain newspaper printed at and called together with all presses types and printing materials and all other the effects used and employed in printing publishing and carrying on the said newspaper were for the considerations therein mentioned duly assigned to and are now vested in the said A. B. and the said (*assignor*) upon certain trusts therein mentioned for the better carrying on the said newspaper and paying off certain debts and incumbrances upon the same which were due to the said (*assignor*) *And whereas* the principal sum of £ is still due and owing to the said (*assignor*) with interest for the same *And whereas* the said (*assignor*) hath applied to the said (*assignee*) to advance him the sum of £ which he hath consented to do upon having a grant of the said principal sum of £ and interest due to the said (*assignor*) secured to him the said (*assignee*) by bond *And whereas* the said (*assignor*) hath this day executed and given to the said (*assignee*) a bond in writing bearing even date herewith and hath thereby become bound to the said (*assignee*) in the penal sum of £ with a condition thereunder written &c. upon payment by the said (*assignor*) his heirs &c. unto the said (*assignee*) his executors &c. of the sum of £ with interest for the same after the rate of £ per cent. at the time and in the manner in the condition of the said bond thereafter mentioned *Now* *this Indenture witnesseth* That in consideration of &c. to the said (*assignor*) in &c. paid by the said (*assignee*) at &c. the receipt whereof the said (*assignor*) doth hereby acknowledge and of

Recital of assignment to assignor.

Debt still due.

Contract for loan.

Bond given by assignor.

Testatum.

No. CXLI. <u>Debt.</u>	<p>and from the same doth acquit release and discharge the said (<i>assignee</i>) his executors &c. He the said (<i>assignor</i>) <i>Doth</i> grant assign transfer and set over unto the said (<i>assignee</i>) &c. <i>All</i> that principal sum of £ so due and owing to the said (<i>assignor</i>) as hereinbefore is mentioned and all interest now and hereafter to become due for or in respect of the same or any part thereof and all and every security and securities for the same and all the right title interest property possibility benefit claim and demand whatsoever at law or in equity or otherwise howsoever of him the said (<i>assignor</i>) of in to or out of the said principal sum and interest and all and singular the premises hereby assigned or intended so to be <i>With</i> full power and authority to and for the said (<i>assignee</i>) his executors administrators and assigns to ask demand sue for recover and receive and to give effectual receipts and discharges for the same either in his or their own name or names or in the name or names of the said (<i>assignor</i>) his executors administrators or assigns <i>To Have Hold</i> receive and take the said debt or principal sum of £ and interest and all and singular the premises hereinbefore assigned or intended so to be or any part thereof respectively unto the said (<i>assignee</i>) his executors &c. for his and their own proper use and benefit <i>Subject</i> nevertheless to the proviso or condition for redemption thereof hereinafter mentioned that is to say <i>Provided always</i> and it is hereby declared and agreed by and between the said parties hereto that if the said (<i>assignor</i>) his heirs executors administrators or assigns do and shall well and truly pay &c. Then the present assignment and every covenant clause article matter and thing herein contained shall cease determine and be void And the said (<i>assignor</i>) for himself his heirs &c. doth hereby covenant &c. with the said (<i>assignee</i>) his executors &c. That he the said (<i>assignor</i>) hath not done or suffered any act matter or thing whereby or by reason whereof the said (<i>assignee</i>) his executors &c. shall or may be hindered or prevented from recovering the said debt or principal sum of £ hereby assigned or intended so to be And that the said (<i>assignor</i>) his executors &c. shall not nor will during the continuance of the said debt or &c. or any part thereof on this security without the express consent or direction of the said (<i>assignee</i>) his executors &c. receive compound incur or prejudice the same And further that the said (<i>assignor</i>) his executors &c. shall and will at the request of the said (<i>assignee</i>) his executors &c. but at the costs and charges of the said (<i>assignor</i>) his &c. make do and execute all such fur-</p>
Power of attorney.	
Proviso for redemption.	
Covenants.	
Assignor hath done no act to incur.	
Will not receive debt.	
Further assurance.	

ther and other lawful acts deeds assignments and assurances in the law for the better enabling him the said (*assignee*) his executors &c. to recover receive &c. the said principal sum of £ and any part thereof as by the said (*assignee*) his executors &c. or his or their counsel in the law shall be reasonably advised devised or required *In witness &c.*

No. CXLI.
Debt.

No. CXLII.

Another Assignment of a Debt. (Short Form.)

No. CXLII.
Debt.

Know all Men by these Presents That in consideration of the sum of £ due by me to (*assignee*) of &c. and for better securing the payment of the same I Do hereby assign unto (*assignee*) his executors &c. *All* that debt or sum of £ which is now due and owing to me from A. B. of &c. for goods sold and delivered by me to the said A. B. and all my right title &c. of in and to the said debt or sum of £ and every part thereof *To have* &c. the said debt &c. from henceforth to his and their proper use and benefit Subject nevertheless to the proviso &c. hereinafter contained *And* I do hereby constitute the said (*assignee*) my true and lawful attorney irrevocable and give and grant to him his executors &c. full power and authority in my name or the names of my executors &c. but to the only proper use and behoof of the said (*assignee*) his &c. to ask demand sue for levy recover receive compound acquit release and discharge the said debt or sum of £ and every or any part or parcel thereof and upon the receipt of the same or any part thereof acquittances on or proper discharges of to make and give and generally for me or in my name or in the names of my executors &c. to make do perform and execute all and every such further and other acts matters and things touching and concerning the premises as to the said (*assignee*) his &c. shall seem requisite and that as fully &c. *And* I do hereby covenant with and to the said (*assignee*) his &c. That I have not done or suffered and that I and my executors and administrators shall not nor will do or suffer any act whereby the said (*assignee*) shall be hindered from receiving and recovering the said debt or any part thereof and that I and my executors &c. shall and will at all times at the request of the said (*assignee*) but at my costs and charges do all other lawful acts for the further and more effec-

Power of attorney.

No. CXLII.
Debt.

tually assigning and assuring the said debt or sum of £
 and every part thereof *Provided always* and it is hereby
 agreed that if I the said (*assignor*) my executors or administrators
 shall well and truly pay to the said (*assignee*) his executors
 administrators or assigns the said sum of £ so due to him
 as aforesaid within three calendar months from the date hereof
 then this present assignment and every matter and thing herein
 contained shall cease determine and be void to all intents and
 purposes whatsoever *In witness &c.*

Assignment of Copartnership Debts, see post, COPARTNERSHIP.

No. CXLIII.
Debt and Divi-
dends.

No. CXLIII.

Assignment of Debt and Dividends under a Fiat of Bankruptcy.

Recital of debt
 due from as-
 signor to as-
 signee.

This Indenture &c. made this day of Between
(assignor) of &c. of the one part and (assignee) of &c. of the
other part Whereas the said (assignor) stands justly and truly
indebted unto the said (assignee) in £ and upwards on the
balance of an account for monies paid laid out and expended
and for business done and performed and for journies taken for
and on the behalf of the said (assignor) and in the prosecution
of suits at law and in equity and in the managing various matters
now in hand in his behalf And whereas the said (assignor) is
not at present able without considerable inconvenience to pay
the amount so as aforesaid now due and owing from him to the
said (assignee) and it will not be in his power for some time to
come to advance money for discharge of the expenses incident
to the proceedings already commenced and others which are
now about to be instituted in his behalf by the said (assignee)
And whereas the said (assignor) as one of the creditors of (bank-
rupt) of &c. a bankrupt hath proved a debt under a fiat of bank-
ruptcy against him the said (bankrupt) to the amount of £
on which no dividend hath as yet been made And whereas in
order to secure to the said (assignee) the payment of the balance
now due and owing to him from the said (assignor) with interest
for the same and to afford a security for the due payment of any
expenses which may be hereafter incurred by him in the affairs

Debt due to the
 assignor from
 bankrupt.

of the said (*assignor*) as well as of all bills of costs and charges that may hereafter be due to him on the account of the said (*assignor*) he the said (*assignor*) hath proposed and agreed to assign and make over to him the said (*assignee*) the said debt aforesaid proved by him against the estate of the said (*bankrupt*) and all dividends which may be due or become payable on account thereof upon the trusts and in manner hereinafter mentioned *Now this Indenture witnesseth* That in consideration of the premises he the said (*assignor*) doth grant &c. unto the said (*assignee*) his executors and administrators *all that* the said debt due and owing to the said (*assignor*) from the said (*bankrupt*) and proved by him under the fiat of bankruptcy against the said (*bankrupt*) as hereinbefore is mentioned and also all and every dividend and dividends sum and sums of money which shall or may be declared or become due and payable on account thereof respectively And all the estate right and interest of him the said (*assignor*) of in and to the same and every part thereof And all powers and remedies for the recovering and enforcing payment of the same *To Have* receive and take the said debt or sum dividend or dividends hereinbefore expressed to be hereby assigned with all benefit and advantage thereof and all powers and remedies for recovering the same unto the said (*assignee*) his &c. as and for his and their own monies *Upon the Trusts* nevertheless and for the purposes hereinafter expressed and declared of and concerning the same *And* for the better enabling him the said (*assignee*) his executors administrators and assigns to receive the said sum and sums of money hereinbefore expressed to be hereby assigned to the said (*assignee*) He the said (*assignor*) doth appoint the said (*assignee*) the true &c. attorney of him the said (*assignor*) to ask demand &c. the said debt or sum of £ and all dividends &c. And on receipt thereof to give receipts and acquittances or discharges for the same as the case shall require and to bring commence and prosecute any action suit or other proceeding whatsoever for recovering and compelling payment thereof And also to adjust settle compound and compromise all accounts and reckonings matters and things whatsoever relating to the said debt dividends and premises or any of them And for all or any of the purposes aforesaid to use the name of the said (*assignor*) and generally to do execute and perform any other act deed matter or thing whatsoever relating to the premises as fully to all intents as he the said (*assignor*) could do if personally present And whatsoever the said (*assignee*) shall lawfully do in or

No. CXLIII.
Debt and Divi-
dends.

Agreement to
assign debt and
dividends.

Testatum.

Habendum.

Power of at-
torney.

Declaration of
trusts.

No. CXLIII. about the premises the said (*assignor*) doth hereby covenant and
Debt and Divi- promise with and to the said (*assignee*) his executors &c. to allow
dends. ratify and confirm *And it is hereby declared* and agreed by and
between the said parties hereto that the assignment hereby made
of the said debt sum and sums of money dividend and dividends
and the power hereinbefore given to the said (*assignee*) his execu-
tors administrators and assigns is so made and given to him
and them And that he and they shall and will receive and stand
possessed of all and every sum and sums of money which may
become payable on account of the said debt or sum or the divi-
dend or dividends thereof Upon the trusts and for the purposes
hereinafter expressed and declared of and concerning the same
that is to say *Upon Trust* That he the said (*assignee*) his execu-
tors administrators and assigns do and shall thereout retain and
reimburse himself or themselves all costs charges and expenses
whatsoever as he or they shall or may from time to time be put
unto or sustain in or about the execution of the trusts hereby
reposed in him and them and also the said debt or sum of £
so as aforesaid now due and owing to him the said (*assignee*)
from the said (*assignor*) Together with lawful interest for the same
from the day of the date hereof And in the next place do and shall
in like manner retain and reimburse himself and themselves the
full amount of all costs payments charges and expenses which
he the said (*assignee*) may from time to time be put unto or incur
or which may become due and owing to him for any business to
be done on account of the said (*assignor*) And when and as
soon as all such sums of money shall have been fully paid off
and discharged *Then* upon this further trust that the said (*assign-*
nee) his executors &c. shall and will pay over to the said (*as-*
signor) his executors &c. the residue of the monies which shall
hereafter be received by him by virtue of these presents.

In witness &c.

No. CXLIV.

Dower.

No. CXLIV.

Assignment of Dower.

Obs. A woman, although legally entitled to her dower at common law, cannot enter upon her part until it has been regularly assigned to her by the sheriff under the queen's writ, or by the heir or the tenant of the freehold, Co. Lit. 34 b.

This Indenture &c. Between (*Heir*) of &c. heir at law of A. B. deceased of the one part and (*Dowress*) of &c. widow and relict of the said A. B. of the other part *Whereas* the said A. B. was at the time of his decease seised of an estate of inheritance in fee simple in possession of and in divers lands and tenements situate &c. which upon his decease descended unto the said (*H.*) subject to the dower of the said (*D.*) *Now this Indenture witnesseth* That upon the request of the said (*D.*) He the said (*H.*) *Doth* by these presents assign unto her the said (*D.*) one third part of the said lands and tenements to wit All that messuage &c. *To Have and to Hold* unto the said (*D.*) for and during the natural life of the said (*D.*) in severalty by metes and bounds as for and in the name of dower and in full satisfaction of all claim which the said (*D.*) hath or ought to have of or in the said lands and tenements of which the said A. B. was seised in his lifetime And the said (*D.*) doth hereby accept the said messuage or tenement &c. so assigned as and for her dower and in full satisfaction of the same *In witness* &c.

No. CXLIV.

Dower.

Recital of seisin
in fee simple.

—◆—
No. CXLV.

Assignment of an Executorship and Indemnity of the Executor by a Mortgage.

No. CXLV.

Executorship.

Obs. 1. An executorship, being an office of trust, is not assignable (see Pref. sect. 2) otherwise than in the qualified manner of the following precedent, which has been taken with some variations from *Wood's Conveyancing*.

2. As to the stamp, see Pref. sect. 4.

This Indenture made &c. Between (*Heir*) son and heir and also residuary legatee under the will of A. B. late of &c. deceased of the one part and (*Executor*) of &c. executor of the last will and testament of the said A. B. *Whereas* the said A. B. did by his last will and testament in writing bearing date &c. devise all his messuages lands tenements and hereditaments and did bequeath all his personal estate unto (*E.*) and E. F. (since deceased) their heirs and assigns *In Trust* by sale or mortgage or otherwise to raise and pay his debts funeral expenses and legacies and made the said (*H.*) his residuary legatee *And whereas* the said (*E.*) hath by and with the privy and consent of the said (*H.*) paid

Recital.

No. CXLV. <i>Executorship.</i> Payment of debts and le- gacies. Agreement to assign. Testatum. Power of at- torney. No act to in- cumber.	and discharged the funeral expenses and divers debts and lega- cies of the said A. B. which are mentioned in the schedule here- unto annexed and hath delivered all discharges and acquittances which were made and given to him the said (E.) for the several sums of money so paid as the said (H.) doth hereby acknow- ledge <i>And whereas</i> it hath been agreed between the said (H.) and the said (E.) that the said (H.) shall from henceforth take upon him the payment of all such legacies and sums of money as yet remain payable by force of the said last will and that the said (E.) shall for that purpose assign unto the said (H.) all such goods chattels and other things as the said (E.) hath or is en- titled to as executor of the same will in such manner as is here- inafter expressed <i>And</i> the said (H.) hath agreed to make such lease and demise to the said (E.) as is hereinafter contained to the intent thereby to indemnify him the said (E.) <i>Now this</i> <i>Indenture witnesseth</i> That in consideration of the premises He the said (E.) Doth grant &c. unto the said (H.) <i>All those</i> the said letters of administration and probate of the will of the said A. B. deceased and all the goods chattels debts securities for debts and other things which the said (E.) hath or is entitled unto as executor of the last will and testament of the said A. B. deceased the receipt of which said leases &c. the said (H.) doth hereby acknowledge <i>To Have Hold</i> receive and take the same and every of them and all the right title and interest of him the said (E.) therein and thereunto and all and singular other the premises hereby assigned unto the said (H.) his executors &c. in as large ample and beneficial a manner as he the said (E.) might have held received and taken the same by virtue of the said will <i>And</i> the said (E.) doth hereby give unto the said (H.) his exe- cutors &c. full power and authority in the name or names of the said (E.) his executors &c. but at the costs and charges of the said (H.) his executors &c. and to and for his and their own use and benefit to demand receive sue for and recover all debts and all other the sums of money due and owing to the estate of the said A. B. deceased and all and every the bonds mortgages secu- rities terms interests and estates concerning or relating to the same which do or shall belong unto the said (E.) as executor of the said will of the said A. B. deceased <i>And</i> the said (E.) for himself &c. doth covenant &c. with the said (H.) his executors &c. that he the said (E.) his &c. hath not at any time heretofore made done or suffered and shall not nor will at any time or times hereafter make do or suffer any act matter or thing whereby any
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of the debts or sums now due and owing to the said A. B. deceased can or may be released discharged or otherwise *And also* that he shall and will at all times hereafter at the reasonable request costs and charges of the said (H.) do any further acts deeds matters and things for the further or better empowering and enabling the said (H.) his executors &c. in the name or names of the said (E.) his executors &c. to demand receive and recover all debts and sums of money due and owing to the estate of the said A. B. deceased *And* the said (H.) in consideration of the premises doth hereby acknowledge and declare that all the said (E.) hath done or acted in the execution of the last will and testament of the said A. B. deceased and as mentioned in the schedule hereunto annexed hath been with the privity consent and approbation of the said (H.) *And* the said (H.) doth hereby for himself his executors &c. covenant &c. with the said (E.) his executors &c. that he the said (H.) his heirs executors &c. shall and will from time to time and at all times save harmless and keep indemnified the said (E.) his executors administrators and assigns and his and their lands and tenements goods and chattels of and from all costs &c. which he or they shall or may sustain &c. by reason of any action &c. and also for or by reason of any default or failure of or in the performance of the said last will and testament of the said A. B. deceased *And this Indenture further witnesseth* That in further pursuance of &c. and in consideration of &c. He &c. (*demise to executor, see Mortgage by Demise*) Subject nevertheless to the proviso or condition hereinafter mentioned that is to say *Provided always* and it is hereby declared and agreed by and between the said parties hereto that if the said (H.) shall and do well and truly perform all and every the covenants and agreements herein contained on his and their part to be done and performed according to the true intent and meaning of these presents Then the said term of years of and in the said messuages or tenements hereby demised shall at the end of years next ensuing determine and be utterly void to all intents and purposes anything in these presents in any ways to the contrary notwithstanding *Provided also* That in the meantime and until the said (H.) shall make default in the performance of the covenants and agreements herein contained by means or occasion whereof the said (E.) his executors administrators or assigns or any of them shall sustain or be put to some trouble suit damage or expense it shall and may be lawful for the said (H.) his heirs executors administrators and assigns

No. CXLV.
Executorship.

Further as-
surance.

Indemnity from
the heir.

Further testa-
tum.
Demise to exe-
cutor.

Proviso for
cesser of term.

Quiet enjoy-
ment until de-
fault.

No. CXLV.
Executorship.

peaceably and quietly to have hold and enjoy the said messuages or tenements &c. hereby demised or otherwise assured or intended so to be &c. and to receive and take the rents &c. without any let hindrance &c. of or by the said (*E.*) his heirs &c. And the said (*H.*) for himself &c. (*Covenants from the heir for title.*)



No. CXLVI.
Furniture.

No. CXLVI.

Assignment of Household Furniture and Verbal Agreement for a Lease.

Recital of
tenancy.

Verbal agree-
ment to grant
lease.

Contract for
purchase.

This Indenture made &c. Between (assignor) of &c. of the one part and (assignee) of &c. of the other part Whereas the said (assignor) is in possession of a messuage or tenement situate &c. as tenant to A. B. of &c. and C. D. of &c. under a yearly rent of £ payable quarterly And whereas the said A. B. and C. D. have verbally agreed to grant a lease of the said messuage or tenement for 21 years from the day of determinable in the first 7 or 14 years at the option of the said (assignor) And whereas the said (assignee) hath contracted with the said (assignor) for the purchase of the household furniture now being in or upon the said messuage or tenement mentioned in the schedule or particular thereof hereunder written at or for the price of £ Now this Indenture witnesseth That for and in consideration of £ to the said (assignor) in &c. by the said (assignee) well &c. paid the receipt &c. He the said (assignor) Hath bargained sold and assigned and by &c. doth bargain &c. unto the said (assignee) his executors and administrators All and singular the household furniture and things mentioned and specified in the said schedule or particular thereof hereunder written and also all the estate right title interest property claim and demand whatsoever of him the said (assignor) into or out of the said messuage or tenement and premises with the appurtenances And the full benefit and advantage to arise and accrue from the said promise or agreement made or entered into by the said A. B. and C. D. for such lease thereof as aforesaid or for any other lease To Have Hold receive take and enjoy the premises hereby assigned or intended so to be unto the said (assignee) his executors administrators and assigns for his and their use absolutely In witness &c.



No. CXLVII.

No. CXLVII.

Goods.

Assignment by a Husband of Household Furniture, Books, Plate, Bills of Exchange, &c, to Trustees to sell for the Payment of Debts, and to stand possessed of Surplus for the separate Use of the Wife.

Obs. A settlement after marriage in favour of a wife and children, by a person not indebted at the time, and not being a trader, is, under the 1 Jac. 1, c. 15, s. 5, good against subsequent creditors, *Lilly v. Osborn*, 3 P. Wms. 298; *Stephens v. Olive*, 2 B. C. C. 90; *Kidney v. Coussmaker*, 12 Ves. 155; and although a settlement after marriage is fraudulent against such persons as were creditors at the time the settlement was made, yet it is otherwise if such settlement contains a proviso for debts, *George v. Millbank*, 9 Ves. 144.

This Indenture made &c. Between (*husband*) of &c. and M. his wife of the first part and (*trustees*) trustees named for the purposes hereinafter mentioned of the second part *Whereas* the said (*H.*) is possessed of or entitled to divers books plate and household furniture and is also possessed of or entitled to the bills of exchange particularly mentioned in the first schedule hereunder written *And whereas* the said (*H.*) is desirous of making a provision as well for the payment of the debts now due and owing by him and mentioned in the second schedule hereto as for the said M. his wife in manner hereinafter mentioned And hath therefore proposed and agreed to assign and make over unto the said (*T.*) and the survivor of them and the executors &c. of such survivor all the said books plate household furniture bills of exchange and other particulars upon or for the intents and purposes hereinafter mentioned * *And whereas* the said (*H.*) hath previously to the date and execution of these presents delivered unto the said (*T.*) the said books plate household furniture bills of exchange and other particulars *Now this Indenture witnesseth* That in pursuance of the said agreement he the said (*H.*) *Doth* assign unto the said (*T.*) their executors &c. *All* and singular the said books plate and household furniture of or to which he was possessed and entitled *And also* the said bills of exchange particularly mentioned in the said schedule hereunder written And all the right &c. of him the said (*H.*) of into and out of the same premises and every of them and every part thereof *To Have hold* take and receive all and singular the premises hereinbefore assigned or intended so to be unto the

No. CXLVII.
Goods.

Declaration of
 trusts.

said (*T.*) their executors administrators and assigns *Upon Trust* that they the said (*T.*) and the survivor of them or the executors or administrators of such survivor their or his assigns do forthwith sell and convert into money the said books plate furniture and other particulars expressed to be hereby assigned and recover and receive the monies due and arising upon or payable by virtue of the said bills of exchange *And* do out of the monies received and to arise by such sale and conversion after deducting the costs charges and expenses of recovering and receiving the said monies pay and satisfy the debts and sums of money specified in the said second schedule hereto to the persons entitled to receive the same *And* shall and do stand possessed of or interested in the surplus of the monies to be received from or on account of the said bills of exchange or to arise by such sale and conversion as aforesaid *In Trust* for the sole and separate use of the said M. wife of the said (*H.*) independently of the said (*H.*) and not to be subject to his debts and engagements to pay apply and dispose of such surplus monies to and for such intents and purposes as if the said M. were a *feme sole* and unmarried *And* the said (*H.*) for himself his heirs executors and administrators doth covenant &c. with the said (*T.*) and the survivor &c. that he shall and will from time to time and at all times hereafter make do and execute all such further and other lawful and reasonable acts deeds matters and things as shall be necessary for the further assuring and assigning the premises and for the more effectually enabling the said (*T.*) and the survivor of them &c. to recover and receive the monies due and payable upon or to arise by virtue of the said bills of exchange as by the said (*trustees*) &c. or his or their counsel in the law shall be advised or required. *In witness* &c.

Covenant for
 further assurance.

No. CXLVIII.

No. CXLVIII.
Good-will.

Assignment of Good-will of a Business.

Obs. 1. The good-will of a trade is assignable, *Bunn v. Guy*, 4 East, 190; 1 P. Wms. 196. But the sale of a trade does not prevent the vendor from setting up a similar trade, unless there be an express stipulation to restrain him from so doing, *Shackle v. Baker*, 14 Ves. 468. A bond or promise to restrain oneself from trading in a particular place, if made upon a reasonable consideration, is good; but otherwise, if not made for a reasonable consideration; or if made to

the restraint of trade altogether, *Mitchell v. Reynolds*, 1 Wms. 181. No. CLXVIII. An agreement by an attorney to relinquish his business, and recommend his clients to another, and not to practise himself within certain limits, is valid in law; but it seems doubtful whether a court of equity, considering the business of an attorney to arise from confidence in his skill and integrity, would decree specific performance of a contract for the sale of it, *Bozon v. Farlow*, 1 Mer. 159.

Good-will.

2. It appears that an *ad valorem* stamp is not necessary where the consideration is merely for the good-will of a trade, and for the privilege of carrying it on for a certain number of years in a particular house, that not being considered a sale of "substantive property," *Lyburn v. Warrington*, 1 Stark. N. P. C. 162; *Belcher v. Sikes*, 6 B. & C. 234.

Stamp.

This Indenture made &c. Between (assignor) of &c. of the one part and (assignee) of &c. of the other part Whereas the said (assignor) hath for many years carried on the trade and business of in the house in which he now dwells and hath established a connexion in the said trade And whereas the said (assignor) hath agreed with the said (assignee) for the sale and relinquishment to him the said (assignee) of the said trade or business and also of the lease of the messuage or tenement where the said business is carried on at or for the price of to be paid as hereinafter mentioned Now this Indenture witnesseth That in consideration of the sum &c. to the said (assignor) in hand &c. paid by the said (assignee) &c. at &c. the receipt &c. He the said (assignor) Doth grant &c. unto the said (assignee) his executors &c. All and singular the good-will beneficial interest and advantage of the connexions and custom which he the said (assignor) now hath in the said trade or business To Have Hold receive and take the said good-will benefit profit and advantage to be made and obtained by and from the said trade or business And all the estate &c. To have and to hold the said premises hereby assigned or otherwise assured or intended so to be with their appurtenances unto the said (assignee) his &c. And the said (assignor) for himself &c. his heirs &c. doth hereby covenant &c. That he the said (assignor) shall not nor will at any time or times hereafter directly or indirectly by himself or in partnership with any person or persons whomsoever carry on the said (a) trade or business of within miles of nor shall nor will at any time hereafter do or cause to be done any act matter

Recital of carrying on trade.

Contract for sale.

Covenants.

Not to carry on trade.

(a) See *supra*, Obs. 1.

No. CXLVIII. or thing whereby or by reason or by means whereof the said *(assignee)* shall or may be injured or damnified in the said trade or business *And further* that the said *(assignor)* shall and will during the space of _____ months next hereafter conduct and superintend the said trade &c. at the risk and for the sole benefit of the said *(assignee)* and use his best endeavours to promote the trade of the said *(assignee)* to the utmost of his power and also shall and will give his personal attendance in the shop (or counting-house) as often as occasion may require during the said period *And this Indenture further witnesseth* That in consideration of the premises &c. (see *Assignment of Lease*.) *And* it is hereby further declared and agreed by and between the said parties hereto that he the said *(assignor)* shall continue to reside in the said messuage or tenement hereby assigned or otherwise assured or intended so to be for the space of six calendar months to be computed from the date hereof without paying rent or taxes for the same unless the said *(assignee)* should by writing under his hand give the said *(assignor)* _____ weeks' notice to quit the said messuage or tenement *And further* That the stock in trade and the fixtures on the said premises shall within the space of one calendar month from the date hereof be valued and appraised by two indifferent persons for that purpose to be chosen the one by the said *(assignor)* and the other by the said *(assignee)* and in case they cannot agree by a third person to be chosen by the two arbitrators *And* that he the said *(assignee)* shall from and immediately after such valuation (b) pay the amount thereof unto the said *(assignor)* his executors &c. *In witness &c.*

Good-will.

Further testimony.

Assignment of lease.

Assignor to reside on the premises for six months.

Stock in trade to be valued.

No. CXLIX.

No. CXLIX. *Assignment of the Moiety of a Boarding School (by Indorsement on the Articles of Copartnership).*

Good-will.

Obs. As to the stamp upon the assignment of a good-will, see *last Precedent*.

To all to whom these Presents shall come The within-named *(assignor)* sendeth greeting *Whereas* the said *(assignor)* by

(b) Or, "give unto the said *(assignor)* his executors administrators or assigns a promissory note in writing under his hand for payment within _____ calendar months to be computed from the date hereof of such sums as the said stock in trade and fixtures shall be valued at as aforesaid."

virtue of the power given to her in and by the within-written articles of copartnership hath contracted and agreed with (*assignee*) of &c. for the absolute sale to her of her share and interest in the boarding-school now carried on by the said (*assignor*) in copartnership with the within-named I. H. under and subject to the conditions limitations and agreements as are in and by the within-written articles expressed and contained *Now know ye* That in consideration of the sum of £ to the said (*assignor*) well and truly paid the receipt &c. she the said (*assignor*) *Doth* sell and assign unto the said (*assignee*) *All that* moiety or one-half part of her the said (*assignor*) of and in the said boarding-school and of and in the said premises where the same is carried on and the furniture fixtures books and other materials relating to the said school and also of and in the within-written articles of copartnership And all the estate right title interest property future emolument and advantage claim and demand whatsoever of her the said (*assignor*) of in or out of the same premises *To Have and to Hold* the said moiety or one-half part of and in the said boarding-school and all and singular other the premises hereby assigned or intended so to be and all future emolument and advantage to arise from the same in as full ample and beneficial a manner as she the said (*assignor*) might have enjoyed the same if these presents had not been made without any let suit &c. And that free &c. (see *Assignment of Annuity by Indorsement*.) *In witness* &c.

No. CXLIX.
Good-will.

No. CL.

Assignment of a Judgment recovered by a Verdict.

No. CL.
Judgment.

Obs. 1. As to judgments and other *choses in action*, see ASSIGNMENTS, Pref. sect. 1.

2. A judgment debt has been held not to be property within the meaning of the 55 Geo. 3, and therefore an assignment of such a debt does not require an *ad valorem* stamp, but must have the ordinary deed stamp, *Warren v. Howe*, 3 D. & R. 494. The 13 & 14 Vict. c. 97, does not appear to affect this decision.

To all to whom these Presents shall come I (*assignor*) of &c. send greeting *Whereas* I (*assignor*) as of term last past recovered a judgment in her Majesty's Court of at Westminster against A. B. of &c. for the sum of £ *Now know ye*

No. CL. <u>Judgment.</u>	That I the said (<i>assignor</i>) for divers good causes and considerations me hereunto moving <i>Do</i> bargain sell and assign unto (<i>assignee</i>) of &c. his executors &c. as well the said judgment for the said sum of £ aforesaid as all benefit profit sum and sums of money and advantage whatsoever that now can shall or may hereafter be obtained by reason or means of the same or of any execution thereupon now had or to be had sued out executed or obtained and all the estate &c. which I the said (<i>assignor</i>) have or ought to have or claim in &c. <i>And further</i> I the said (<i>assignor</i>) do by these presents make &c. the said (<i>assignee</i>) &c. my attorney &c. for me and in my name to sue and prosecute the said execution upon the said judgment and upon composition made concerning the premises to acknowledge satisfaction or to make or give any other release or discharge for the same and to make and do all such other acts and things whatsoever as shall be requisite in and about the premises <i>And</i> I the said (<i>assignor</i>) for myself do hereby covenant, &c. in manner and form following that is to say That I the said (<i>assignor</i>) have never made or executed any release or other discharge of the said judgment or of any execution which hath been or shall thereupon be sued or executed neither will nor shall I the said (<i>assignor</i>) my executors or administrators at any time hereafter make or do any act or other thing whatsoever whereby the said judgment or any execution which hath been or shall at any time hereafter be thereupon be sued or executed by the said (<i>assignee</i>) and his assigns shall be in any manner defeated hindered disabled debarred or extinguished without the consent of the said (<i>assignee</i>) his executors administrators or assigns thereto first had in writing nor revoke invalidate or avoid any power or authority hereinbefore by me given to the said (<i>assignee</i>) without such consent as aforesaid <i>And further</i> that I the said (<i>assignor</i>) my executors and administrators shall at all times hereafter at the request costs and charges of the said (<i>assignee</i>) &c. maintain justify allow and confirm all such lawful actions suits processes executions and proceedings whatsoever as have been or shall hereafter be brought sued forth or prosecuted against the said A. B. his heirs &c. his their or any of their lands tenements goods or chattels upon or by reason of the said judgment <i>In witness</i> &c.
Power of attorney.	
Covenants.	
Judgment not satisfied.	
Assignor will not release.	

ASSIGNMENTS OF LEASES.

- | | |
|--|---|
| <p>1. <i>Assignment to be in Writing.</i></p> <p>2. <i>Assignee bound by the Covenants of the Lease.</i></p> <p>3. <i>License to assign.</i></p> | <p>4. <i>Consideration.</i></p> <p>5. <i>Covenants qualified in Assignments.</i></p> <p>6. <i>Ad valorem Stamp necessary.</i></p> |
|--|---|

SECT. 1. By the 29 Car. 2, c. 3, no lease, estate or interest, either of freehold or for term of years, or any uncertain interest in land, shall be assigned, unless by deed or note in writing, signed by the party or his agent legally authorized. Assignment to be in writing.

2. An assignee is bound, under the words "subject to the rents and covenants on the lessee's part to be paid, &c." to indemnify the assignor against the rent and covenants, although he be not required so to do by the agreement for the sale, *Pember v. Mathers*, 1 B. C. C. 52. As a lessee will, notwithstanding his assignment to another, continue liable under his covenant to pay the rent during the term, this provision is particularly necessary. If the assignor be himself an assignee, it is necessary for this condition to be revived on his part, in order that he may be protected against his own covenant. Where it is of importance to save the expense of a counterpart, a deed of covenant, or a bond, may be taken from the assignee for performance of the covenants in the lease, or a proviso similar to that in leases may be added on breach of covenants, *Doe v. Bateman*, 2 B. & A. 168. (As to the liabilities of lessee and assignee, see further, LEASE, Pref. sect. 16.) Assignee bound by the covenants of the lease.

3. If the lessee is prevented from assigning without the licence of the lessor, it is incumbent on him as vendor, and not on the purchaser, to procure the licence, *Lloyd v. Crisp*, 5 Taunt. 249; *Mason v. Corder*, 7 ib. 9. If the purchaser buy of one who has previously bought, but not taken a conveyance, he can call on the original vendor to convey to him, *Wood v. Griffith*, 1 Swanst. 54. Licence to assign.

4. No consideration is necessary to support an assignment of a lease, the rents and covenants being sufficient. Consideration.

5. In an assignment of a lease the covenants must be qualified throughout, where it is intended to restrict them to the assignor's own acts. It has been held that a general covenant will not be restrained by a subsequent clause, *Gainsford v. Griffith*, 1 Saund. 59; *Barton v. Fitzgerald*, 15 E. 530. Covenants qualified in assignments.

6. By the 44 Geo. 3, c. 98, re-enacted by the 55 Geo. 3, c. 184, an assignment of a lease, although not under seal, requires an *ad valorem* stamp on the consideration money. *Ad valorem stamp necessary.*

No. CLI.

Lease.

No. CLI.

Assignment of a Lease with an Assignment of Fixtures and Policy of Insurance. (General Precedent.)

Recital of lease. *This Indenture made &c. Between (assignor) of &c. of the one part and (assignee) of &c. of the other part Whereas by indenture of lease bearing date on or about the day of , and made between (lessor) of the one part and (original lessee) of the other part For the considerations therein expressed the said (lessor) did demise All that &c. with the appurtenances unto the said (lessee) his executors &c. from the day of last past for the term of years at and under the yearly rent covenants conditions and agreements in and by the said indenture of lease reserved and contained. And whereas after divers mesne assignments and assurances in the law ultimately by an indenture of assignment bearing date &c. the said messuage and premises became vested in the said (assignor) for the residue of the term which was then to come and unexpired. And whereas the said (assignee) hath contracted with the said (assignor) for the sale to him of the said messuage and premises comprised in the said in part recited indenture of lease for the residue of the said term of years at or for the price of £ (a) Now this Indenture witnesseth That in consideration of the sum of £ of &c. to him the said (assignor) paid by the said (assignee) at or before the sealing of these presents the receipt whereof he the said (assignor) doth hereby acknowledge and of and from the same doth acquit release and discharge the said (assignee) his executors administrators and assigns for ever He the said (assignor) doth (b) assign transfer and set over unto the said (assignee) his executors administrators and assigns All that the said messuage &c. and all and singular other the premises comprised in the said in part recited indenture of lease with their and every of their appurtenances together with the said in part recited indenture of lease (c) And all the estate right title term and terms of years*

Mesne assignments.

Contract for sale.

Testatum.

(a) Where the licence of the lessor must first be had (see *supra*, sect. 4,) say, “And whereas the said (assignor) hath previous to the sealing and delivery of these presents applied to and procured the licence of the said (lessor) as by a memorandum indorsed upon the said indenture doth appear.”

(b) “In pursuance of such licence as aforesaid.”

(c) If the policy of insurance be assigned at the same time, say, “and the said policy of insurance.”

to come and unexpired trust property possession claim and demand whatsoever both at law and in equity of him the said (*assignor*) of in to and out of the said messuage &c. *To Have and to Hold* the said messuage &c. and premises hereby assigned or intended so to be with their and every of their appurtenances unto the said (*assignee*) his executors administrators and assigns henceforth for and during all the rest and residue now to come and unexpired of the said term of years (*a*) subject to the rents covenants conditions and agreements in the said in part recited indenture of lease reserved and contained which on the tenant's or lessee's part ought to be paid observed and performed *And* the said (*assignor*) doth hereby for himself his executors administrators and assigns covenant promise and agree with and to the said (*assignee*) his executors &c. in manner following that is to say That the rent covenants conditions and agreements in the said in part recited indenture of lease reserved and contained have been duly paid observed and performed up to the day of last past *And* (*b*) that for and notwithstanding any act matter or thing whatsoever by the said (*assignor*) made done or knowingly or willingly suffered to the contrary the said hereinbefore in part recited indenture of lease is at the time of the sealing and delivery of these presents a good valid and subsisting lease and demise in the law and not forfeited surrendered or become void and voidable *And* that for and notwithstanding any such act deed matter or thing he the said (*assignor*) now hath in himself good right full power and absolute authority to assign the said messuage and premises hereby assigned or intended so to be for and during all the residue and remainder of the said term of years in manner aforesaid and according to the true intent and meaning of these presents *And further* that it shall and may be lawful to and for the said (*assignee*) his executors administrators and assigns from time to time and at all times hereafter during the said term of years peaceably and quietly to enter have hold occupy possess and enjoy the same messuage and premises with their appurtenances and to receive and take the rents issues and profits thereof to and for his and their own use and benefit, without any lawful let suit trouble denial eviction interruption claim or demand of or by him the said

No. CLI.

Lease.

Habendum.

Covenants from the assignor.

That lease is valid and subsisting.

Assignor has good right to assign.

For quiet enjoyment.

(a) "Together with all benefit and advantage to accrue from the said policy of insurance."

(b) As to qualified covenants, see *Obs.* 5.

No. CLI.

Lease.Free from in-
cumbrances.

assignor) his executors or administrators or any person or persons lawfully or equitably claiming or to claim by from under or in trust for him them or any of them And that free and clear and freely and clearly acquitted exonerated released and for ever discharged or otherwise by the said (*assignor*) his executors or administrators well and sufficiently saved defended and kept harmless and indemnified of from and against all and all manner of former and other estates titles troubles charges and incumbrances whatsoever either already or to be hereafter made done committed or suffered by the said (*assignor*) his executors or administrators or by any person or persons lawfully claiming or to claim by from under or in trust for him them or any of them save and except the rents covenants conditions and agreements in and by the said hereinbefore recited indenture of lease reserved and contained and which on the tenant or lessee's part are or ought to be paid observed and performed And further that the said (*assignor*) his executors administrators and assigns and all other person or persons having or claiming or who shall or may have or claim any estate right title interest property or demand whatsoever either at law or in equity of in to or out of the said messuage or tenement and premises hereby assigned or intended so to be or any of them or any part thereof by from under or in trust for the said (*assignor*) his executors or administrators shall and will from time to time and at all times during the said term of years at the request and proper costs and charges of the said (*assignee*) his executors administrators and assigns make do and execute or cause to be made done or executed all and every such further and other lawful and reasonable acts assignments and assurances in the law whatsoever for the better more perfectly and absolutely assigning and assuring of the said messuage &c. for the remainder then to come and unexpired of the said term of years as by the said (*assignee*) his executors administrators or assigns or his or their counsel in the law shall be reasonably advised devised and required And the said (*assignee*) doth hereby for himself his heirs &c. covenant &c. that he the said (*assignee*) his heirs &c. shall and will from time to time and at all times hereafter during the said term of years granted by the said in part recited indenture of lease well and truly pay or cause to be paid the yearly rent in and by the same indenture of lease reserved which henceforth shall grow due and payable in respect of the said premises hereby assigned at such time and in such manner as the same is thereby reserved and also shall and will observe perform

Further assu-
rance.Covenants from
the assignee.

To pay rent.

and keep all and singular the covenants conditions and agreements in the said indenture of lease contained and which henceforth on the tenant or lessee's part ought to be paid observed performed and kept *And* shall and will from time to time and at all times hereafter save defend keep harmless and indemnified the said (*assignor*) his heirs executors administrators and assigns and his and their lands goods and chattels from and against the payment of the said rent and the performance of the said covenants conditions and agreements and from and against all and all manner of actions suits cause and causes of action costs charges damages claims and demands whatsoever for or on account of the same or in anywise relating thereto (*a*). *In witness &c.*

No. CLI.

Lease.

To keep the covenants.
Indemnity to assignor.

No. CLII.

Assignment of a Lease by Indorsement.

Know All men that (*assignor*) of &c. for and in consideration of the sum of &c. to him by (*assignee*) of &c. paid at or before &c. the receipt &c. *Doth* assign to the said (*assignee*) his executors

No. CLII.

Lease (by Indorsement).

(*a*) Where the fixtures are also to be assigned, this may be done by a further testatum, as follows: "*Whereas* the several fixtures and other things mentioned in the schedule hereunder-written have been agreed to be taken by the said (*assignee*) at the price or sum of £ *Now this Indenture further witnesseth* That in consideration of the sum of £ to the said (*assignor*) paid by the said (*assignee*) at or before the signing and sealing these presents the receipt whereof he the said (*assignor*) doth hereby acknowledge &c. (see the first testatum) *He* the said (*assignor*) *Doth* assign all and singular the stoves grates ranges coppers shelves dressers goods chattels matters and things whatsoever mentioned and set forth in the schedule hereunder written or hereunto annexed and every of them and every part and parcel thereof *To have* &c. the said goods chattels &c. hereby assigned or intended so to be unto the said (*assignor*) his executors administrators and assigns as his and their own proper goods and effects absolutely and for ever."

Assignment of fixtures.

Where a policy of insurance is to be assigned with a lease, then add, "*And whereas* by a certain deed-poll in writing bearing date &c. and being or purporting to be a policy of insurance under the hands and seals of the directors of Company he the said (*assignor*) hath insured the said premises against damages by fire for the sum of £ And it hath been agreed that the same policy shall be assigned to the said (*assignee*) in manner hereinafter mentioned *Now this Indenture further witnesseth* That &c. and in consideration of the premises he the said (*assignor*) *Doth* assign &c. *All that* deed-poll or policy of &c. And all the right &c. with full power &c. (see *Assignment of a Debt*) *To have* &c. the said deed-poll &c. and all and every sum or sums &c. and all and singular" &c. (see *Assignment of Policy of Insurance*).

Recital of insurance.

No. CLII.

*Lease (by
Indorsement.)*

&c. *All* &c. and singular the premises comprised in the within-written indenture and thereby demised to A. B. with their appurtenances together with the within-written indenture of lease And all the estate &c. of him the said (*assignor*) of in or to the said premises or any part thereof by virtue of the said indenture of lease *To Have* &c. the said messuage &c. and all and singular other the presents with their appurtenances unto the said (*assignee*) his executors &c. for and during all the residue and remainder yet to come &c. Subject and without prejudice to the rents covenants and conditions in and by the within-written indenture of lease reserved and contained (*add covenants from the assignor, as in last precedent*).



No. CLIII.

*By Indorsement
by
Administrator.*

No. CLIII.

*Assignment of a Lease by Indorsement by an Administrator with
Consent of the Lessor.*

Know all men by these Presents That (administrator) of &c. administrator of all and singular the goods chattels rights and covenants of the within-named (intestate) deceased and in consideration of the sum of £ of lawful money &c. to him paid by (assignee) of &c. at or before &c. the receipt &c. (see General Precedent, No. CLI.) Doth by and with the consent of the within-named (lessor) testified by his executing these presents assign transfer and set over unto the said (assignee) his executors administrators and assigns All that &c. and premises comprised in the within-written indenture and thereby demised with their and every of their appurtenances together with the within-written indenture of lease and all the estate right title and interest which he the said (administrator) as administrator of the said (intestate) as aforesaid or otherwise now hath or at any time hereafter shall or may have claim challenge or demand of in or to all or any of the said premises with their and every of their appurtenances by virtue of the within-written indenture of lease or otherwise as the administrator of the said (intestate) To Have and to Hold the said messuage &c. and all and singular other the premises with their and every of their appurtenances unto the said (assignee) his executors administrators and assigns for and during all the rest and residue and remainder yet to come and unexpired of the within-mentioned term of years in as full ample and

beneficial a manner to all intents and purposes whatsoever as he the said (*administrator*) as administrator might or could in any manner have held and enjoyed the same if these presents had not been made subject and without prejudice to the yearly rent of £ in and by the within indenture of lease reserved contained and to become due and payable and to all and every the covenants clauses provisoes and agreements therein contained And the said (*administrator*) for himself his heirs executors and administrators doth hereby covenant and declare to and with the said (*assignor*) his executors administrators and assigns that he the said (*administrator*) hath not at any time heretofore made done committed or executed or wittingly or willingly permitted or suffered any act deed matter or thing whatsoever whereby or where-with or by reason or means whereof the said messuages and premises hereby assigned or intended so to be are is may can or shall be in any ways impeached charged affected or incumbered in title charge estate or otherwise howsoever And the said (*administrator*) doth hereby further covenant &c. (*Covenant for further assurance, see General Precedent*) In witness &c.

No. CLIII.
By Indorsement
by
Administrator.

—◆—
No. CLIV.

Assignment of certain Parts of Leasehold Premises (of which a Partition had been made) to one of the Parties entitled thereto in severalty, subject to a proportionate Part of reserved Rents, &c.

No. CLIV.
Parts of
Leasehold
Premises.

Obs. Where different parties occupy different portions of land under the same lease, and are all equally liable to the whole rent and the performance of the covenants in the lease, it is usual for them to enter into cross covenants to indemnify each other, which will accompany the deed, in which case it is like the following precedent, but the object may be effected in different ways, see further COVENANTS, LEASES.

This Indenture made &c. Between W. P. of &c. and others of the first part H. A. and others of the second part and I. R. of &c. of the third part Whereas by indenture of lease bearing date &c. and expressed to be made between I. D. of the first part and the said W. P. and others of the second part It is witnessed that for the considerations therein expressed the said I. D. did demise lease set and to farm let unto the several persons parties thereto

Recital of lease.

No. CLIV.

*Parts of
Leasehold
Premises.*

of the second part their executors and administrators *All &c. To Have and to Hold* the same unto the several persons parties thereto of the second part and their executors &c. from the day of then last past for the term of years and months wanting six days subject to the clear yearly rent of £ for the first three years of the said term and the clear yearly rent of £ for the remainder of the said term and to the observance and performance of the covenants and agreements therein contained and on the tenant and lessee's part to be paid observed and performed *And whereas* the said pieces and parcels of land mentioned and demised by the indenture hereinbefore recited were some time since divided into thirty-six lots which are laid down and delineated in the plan or ground plot thereof drawn in the margin of these presents and a messuage and dwelling-house and offices have been erected and built upon each of the lots in the said plan or ground-plot distinguished by the numbers

* Division of demised premises.

And whereas the said pieces or parcels of land and the messuage &c. which have been so erected as aforesaid are now vested in the said W. P. &c. for the residue of the said term of *Upon trust* for the several persons parties hereto of the second part and the said I. R. as they the said W. P. &c. do hereby admit and acknowledge *And whereas* the several persons parties hereto of the second part and the said I. R. lately determined to make a partition of and to divide in severalty between themselves the said pieces &c. and the said messuages so erected and built as aforesaid *And whereas* such partition or division hath accordingly been made by and between the said parties and it hath been agreed that the pieces &c. of land hereinafter described and also assigned or intended so to be with their appurtenances shall be taken and occupied by and assigned to the said I. R. as and for his part and share in severalty of and in all and singular the said premises subject nevertheless to the payment of £ as a proportionate part of the said rent of £ reserved by the said indenture of lease hereinbefore recited and to the observance and performance of the covenants reserved and contained in and by the said indenture of lease and on the tenant or lessee's part to be paid observed and performed *Now this Indenture witnesseth* that in pursuance of and for effectuating the said recited agreement They the said W. P. &c. according to their several and respective estates rights and interests in the premises but not further or otherwise and at the request and by the direction of the said several persons parties hereto of the second part testified

Agreement by parties of the second part so to make a partition.

Partition made.

Testatum.

by their severally executing these presents *Do* and each of them *Doth* assign And the said several persons parties hereto of the second part according to their respective estates &c. *Do* and each of them *Doth* assign and confirm unto the said I. R. his executors administrators and assigns *All those* several lots pieces or parcels of land and premises delineated on the said plan or ground plot drawn in the margin of these premises distinguished by the number with their and every of their rights members and appurtenances And all ways &c. And all the estate &c. *To Have and to Hold* the said lots &c. and all and singular other the premises hereby assigned or intended so to be and every part and parcel of the same with their appurtenances unto the said I. R. his executors administrators and assigns from thenceforth for and during all the residue and remainder of the said term of &c. therein now to come and unexpired *Subject* nevertheless to the payment of the yearly rent of £ as a proportionate part of the said rent of £ reserved by the said indenture And *subject* also to the observance and performance of the covenants and agreements in the said indenture of lease contained and which on the tenant or lessee's part are or ought to be from thenceforth observed and performed And the said several persons and parties hereto of the first and second parts (*covenant that they have done no act to incumber, see ante*) And the said I. R. doth hereby &c. (*covenant to pay proportion of rent and performance of the covenants*) *In witness* &c.

No. CLIV.

Parts of
Leasehold
Premises.

Habendum.

No. CLV.

Assignment of a Legacy to a Trustee for an Infant by an Order of the Court of Chancery.

No. CLV.

Legacy.

This Indenture made &c. Between (*trustees under a marriage settlement*) of the one part and (*trustee*) a trustee named for and in behalf of (*infant*) an infant of the other part *Whereas* (*recite the will of I. T. whereby he devised and bequeathed his estate and the legacies therein charged*) And *whereas* by indenture bearing date &c. and made between (*intended husband*) therein described of the first part (*intended wife*) of &c. spinster and a legatee under the will of the said I. T. deceased of the second part and the said (*trustees*) of the third part *In consideration* of a marriage then intended and afterwards solemnized between the said (*I. H.*) and the said (*I. W.*) the said (*I. W.*) did assign unto the said (*trustees*)

Recital of will.

Of settlement.

No. CLV.
Legacy.

the said legacy of £ so bequeathed to her by the will of the said I. T. and thereby directed to be raised under the trusts of the said term of years *To Hold* the same unto the (*trustees*) their executors &c. Upon such trusts as are therein declared concerning the same for the benefit of the said (*legatee*) during the term of her natural life and after her decease for the benefit of the said (*I. H.*) and by the now reciting indenture the said (*trustees*) are authorized to receive the said sum of £ and to give discharges for the same *And whereas (recite act of parliament for vesting part of the estates of the said I. T. deceased entailed by his will in trustees for the purpose of selling the same and paying off incumbrances affecting those and other estates) And whereas* the said (*trustees in the act of parliament*) have accordingly sold and conveyed the said manors &c. so vested in them by the said act *In Trust* to be sold as aforesaid to (*purchaser*) for the sum of £ being the best price that could be got for them and have applied the monies arising from the sale thereof according to the directions of the same act as far as the same would extend *And whereas* the said (*trustees*) have by and out of the said purchase money or sum of £ paid unto the said (*trustees under the settlement*) the sum of £ in part payment of the said legacy or sum of £ Upon the trusts affecting the same by virtue of the said in part recited indenture of settlement the remaining part of the said sum of £ having been exhausted in paying the several sums of money directed to be paid thereout by the said in part recited act of parliament *And whereas* the sum of £ being the remaining part of the said legacy or sum of £ is now due and owing to the said (*trustees under the settlement*) but all interest for the same hath been paid up to the day of *And whereas* the said (*legatee*) hath departed this life in the year leaving the said (*husband*) her husband and the said (*infant*) an infant of the age of years or thereabouts her only child her surviving who by virtue of or under the said recited will of the said I. T. deceased is seised of the estates thereby devised for an estate in tail in reversion *And whereas* by a decree or order of the High Court of Chancery made and pronounced on or about the day of in a cause then and there depending in which the said (*infant*) by (*guardian*) his guardian and next friend is plaintiff and C. F. and others are defendants It was ordered that it should be referred to (*master*) one of the Masters of the said court to inquire what incumbrances affected the real estates devised by the will of the

Of act of parliament.

Of sale by trustees.

Of payment in part of legacy.

Death of legatee.

Order to refer to master.

said I. T. deceased and then remaining unsold *And whereas* the said Master in pursuance of the last recited order made his report in the said cause bearing date &c. and thereby certified that the plaintiff's real estates were *inter alia* subject to the sum of £ the residue of the sum of £ charged upon the plaintiff's estate by the will of the said I. T. deceased in favour of the said (*legatee*) late the wife of the said (*husband*) *And whereas* the said (*infant*) did on or about the day of present his petition to his Honor the Master of the Rolls stating that the said sum was due to the trustees under the settlement made on the marriage of the said (*husband*) with the said (*legatee*) his late wife but that all interest thereon had been paid out of the rents and profits of the plaintiff's said real estates *And* that the said (*husband*) and his said trustees had called for the said sum of £ *And that* pursuant to a decree of the said court the surplus of the rents of the plaintiff's said real estate had been from time to time invested in the purchase of Three per Cent. Bank Annuities *And that* there was standing in the name of the Accountant-General of the court *In Trust* in the said cause to the personal estate account of the said plaintiff the infant the sum of £ in Three per Cent. Bank Annuities And in cash the sum of £ which Bank Annuities and cash constituted part of the personal estate of the said plaintiff *And* that the petitioner is desirous that so much of the said Bank Annuities as should be necessary for that purpose might be sold and applied in payment of the said sum of £ *And* that the mortgage or other security for the said sum of £ might be assigned to a trustee *In Trust* for the benefit of the said petitioner his executors and administrators and that it might be declared part of the said petitioner's personal estate the petitioner therefore prayed that it might be referred to the Master to take an account of the principal money due on the said mortgage or charge of £ and to inquire whether it would be proper and for the benefit of the petitioner that what should be so found due might be paid off and discharged by the sale of a sufficient part of the said Bank Annuities for that purpose and that the said Master might settle a proper transfer in case the parties differed about the same of the said mortgage or other security for the said sum of £ unto a trustee to be approved by the said Master who was to stand possessed thereof *In Trust* for the benefit of the said petitioner his executors and administrators *And whereas* by an order made in the last recited cause on or about the day of (*recite order in pursuance*

No. CLV.

Legacy.

Master's report.

Petition of infant.

matter or thing whatsoever whereby or by reason whereof the said sum of £ hereby intended to be assigned or any part thereof is can shall or may be affected charged released or incumbered in any wise howsoever *In witness &c.*

No CLV.
Legacy.

No. CLVI.

Assignment of Monies by way of collateral Security.

No. CLVI.
Money.

This Indenture &c. Between (*assignor*) of &c. of the one part and (*assignees*) trustees under the marriage settlement of the said (*assignor*) of the other part *Whereas* by an indenture bearing date &c. and made between the said (*assignor*) of the first part (*intended wife*) of &c. spinster of the second part and the said (*trustees*) of the third part being a settlement &c. (see *last precedent*) after reciting among other things that the said (*I. W.*) was possessed of or entitled to various outstanding debts due to her and also to a tontine annuity &c. *It was witnessed* That the said (*I. W.*) with the privity of the said (*assignor*) assigned unto the said (*T.*) *All* and singular the debts &c. *To Hold* the premises unto the said (*trustees*) their executors &c. *Upon Trust* after the solemnization of the said marriage to pay the dividends &c. to such persons and in such manner as she the said (*I. W.*) should during her life notwithstanding her coverture direct or appoint and in default of appointment to pay the same into the hands of the said (*I. W.*) for her separate use during her life and after her decease *Upon Trust* to pay all such dividends and interest to the said (*assignor*) during his life And after his decease *In Trust* for the children of the said intended marriage in manner therein mentioned *And whereas* the said marriage between the said (*assignor*) and the said (*I. W.*) took effect soon after the execution of the said settlement *And whereas* by an indenture bearing date &c. and made between (*grantor*) therein described of the first part the said (*assignor*) of the second part and the said (*T.*) of the third part In consideration of the sum of £ paid by the said (*T.*) to the said (*G.*) he the said (*G.*) granted unto the said (*assignor*) during the joint natural lives of the said (*G.*) and the said (*assignor*) and the life of the longest liver of them one annuity or clear yearly sum of £ chargeable upon all the messuages lands and hereditaments of him the said (*G.*) situated &c. Subject to redemption on payment of the sum of £ in manner therein mentioned which annuity was purchased

Settlement of
wife's property.

Trusts of the
settlement.

Annuity purchased out of
the trust estate.

No. CLVI. by the said (*assignor*) with certain of the monies which by the said
Money. settlement were assigned to the said (*T.*) *And whereas* the said
 Bond given by (*assignor*) by bond or &c. in writing bearing date &c. became
 the assignor. bound to the said (*T.*) for the payment of £ lent to him by
 them by and out of the said trust estate and which said sum is
 Death of wife. still due and owing to the said (*T.*) by the said (*assignor*) *And*
whereas the said M. (*assignor's wife*) departed this life leaving
 the said (*assignor*) her husband and two children namely E. G.
 of the age of &c. and W. G. of the age of &c. or thereabouts her
 surviving and upon the decease of the said (*wife*) the said (*as-*
signor) became entitled to receive for his life the said interest
 dividends &c. *And whereas* the said (*assignor*) hath received
 from the said (*G.*) in redemption of his aforesaid annuity the
 said sum of £ for which the said (*assignor*) became account-
 able to the said (*T.*) as the trustees of the said settlement *And*
 Warrant of at- *whereas* the said (*assignor*) hath agreed to secure the payment to
 torney. the said (*T.*) of the said sum of £ And in part performance
 of his agreement hath by his warrant of attorney bearing date
 &c. authorized certain attornies of her Majesty's Court of at
 Westminster to confess judgment against him in or as of term
 last term next or some subsequent term at the suit of the
 said trustees for the sum of £ *Now this Indenture witnesseth*
 That in pursuance and further performance of the said agreement
 be the said (*assignor*) for himself his heirs &c. doth covenant with
 the said (*T.*) their executors &c. in manner following that is to
 say That he the said (*assignor*) will pay or cause to be paid unto
 the said (*T.*) or the survivor of them or the executors &c. of such
 survivor the said sum of £ at or upon the day of
 without any deduction or abatement whatsoever *And* the said
 (*assignor*) doth hereby expressly direct authorize and empower the
 said (*T.*) or the survivor &c. to receive the said sums of £ and
 £ and also all interest dividends and annual or other pro-
 ceeds of the before mentioned trusts stocks funds and securities
 comprised in and subject to the trusts of the before recited in-
 denture of settlement and to which he the said (*assignor*) is en-
 titled for his life and from time to time when and as the same
 shall be received after full payment and discharge of all costs
 charges and expenses incurred and to be incurred in and about
 the execution of the aforesaid trusts to lay out or invest the
 residue thereof in the names of the said (*T.*) or the trustees or
 the trustee for the time being at interest until the same shall
 amount to the said sum of £ or so much thereof as he the

Covenant to
pay.

said (*assignor*) shall contrary to his aforesaid covenant fail to make up and pay as hereinbefore mentioned *Provided* that nothing herein contained shall oblige or require the said (*T.*) their executors &c. to sue or even apply for the payment of the said sum of £ or any part thereof nor shall they the said (*T.*) or any or either of them be in any wise answerable for any more money or monies than they shall respectively actually receive *And* the said (*assignor*) for himself his executors and administrators doth hereby covenant promise and agree with and to the said (*T.*) their executors administrators and assigns that he the said (*assignor*) shall not nor will at any time or times hereafter take receive release or discharge any part of the said trust monies and premises without the consent in writing of the said (*T.*) first had and obtained for that purpose *And* that he the said (*assignor*) shall and will from time to time and at all times make do and execute and suffer or cause to be made done and executed all and every such further and other lawful acts deeds assignments and assurances in the law whatsoever for the further better more perfectly and satisfactorily assuring the said sum or sums interest dividends and premises unto the said (*T.*) their executors administrators and assigns and for the further and more effectually enabling them to recover receive and dispose of the same *In Trust* as aforesaid in such manner and form as by the said (*T.*) their executors administrators and assigns or their counsel learned in the law shall be reasonably devised advised or required *And further* that the said (*assignor*) his executors administrators and assigns shall and will from time to time and at all times hereafter well and sufficiently save defend keep harmless and indemnify them the said (*T.*) each and every of them and each and every of their executors administrators and assigns and their each and every of their goods chattels lands tenements and hereditaments of from and against all costs losses damages and expenses which they or either of them shall or may suffer sustain or be put unto for or by reason or means of their or either of their acts in or about the execution of the trusts of the said in part recited indenture of settlement or of having permitted or suffered any part of the said trust estate to be received by the said (*assignor*) contrary to the strict meaning of the said trusts or of any sums of money being due or owing by him the said (*assignor*) to the said trust estate or otherwise in relation thereto or to the trusts created by the said in part recited indenture of settlement *And lastly* that he the said (*assignor*) his heirs executors or administrators

No. CLVI.
Money.

Trustees not to be answerable.

Assignor not to receive trust estate.

Indemnity to trustees.

No. CLVI.
Money.

shall and will within six months after each of the said two sons E. and W. of the said (*assignor*) shall attain his age of 21 procure from him and deliver to the said (*T.*) or the survivor of them or the survivor of them the executors or administrators of such survivor their or his assigns a full and complete release and indemnity in respect of the said trust premises and his claims under the said settlement *Provided* that nothing therein contained shall extend to injure or affect the interests of the said E. and W. or either of them in and to such parts of the said trust funds as shall then actually remain vested in the said (*T.*) or &c. *And further* it is hereby expressly declared and agreed by and between the said parties that they the said (*T.*) and the survivor of them and the executors or administrators of such survivor their or his assigns shall and will stand possessed of and interested in the stocks and securities to be purchased with the said sum of £ herebefore covenanted to be paid by the said (*assignor*) as aforesaid or in default of such payment in the interest dividends and annual proceeds herebefore directed to be received upon such and the same trusts and subject to such and the same powers provisoes declarations and appointments as the same are or ought to be subject or liable to under or by virtue of the said in part recited indenture of settlement *In witness &c.*



CLVII.

No. CLVII.
Money.

*Assignment of a Sum of Money by way of Security for the
 Payment of another Sum.*

Recitals.

Testatum.

This Indenture made &c. Between (assignor) of &c. of the one part and (assignee) of &c. of the other part Whereas by indenture &c. (recite settlement giving power of appointment to husband and wife) And whereas (recite appointment of &c. by the husband at his decease to the assignor his son) Now this Indenture witnesseth That in consideration of £ to the said (assignor) paid by the said (assignee) the receipt &c. He the said (assignor) doth assign unto the said (assignee) his executors &c. All that the sum of £ so given and appointed unto the said (assignor) as herebefore mentioned and all the estate right title interest property possibility claim and demand whatsoever both at law and in equity or otherwise howsoever of him the said (assignor) of in to out of or upon the premises hereby assigned or any part thereof respectively with full power and authority to

and for the said (*assignee*) his executors administrators and assigns &c. (see *Assignment of a Debt*) To Have &c. the said sum of £ and all and singular other the premises hereby assigned unto the said (*assignee*) his executors &c. to and for his and their own use *Subject* nevertheless to the proviso or condition herein-after mentioned *Provided always* That if the said (*assignor*) his executors or administrators do and shall pay unto the said (*assignee*) his executors &c. the sum of £ with interest for the same at the rate of £ *per cent.* at or before the end of twelve calendar months from the date hereof Then these presents shall be void *And* the said (*assignor*) for himself his executors and administrators doth hereby covenant with the said (*assignee*) his executors administrators and assigns in manner following that is to say That he the said (*assignor*) his executors or administrators shall and will pay unto the said (*assignee*) his executors administrators and assigns the said sum of £ with interest after the rate aforesaid at or before the end of twelve calendar months from the date hereof *And also* that he the said (*assignor*) hath not done &c. any act to incumber (see *Assignment of Legacy*) *And* that he hath in himself good right and full power to assign the said sum and the premises hereby assigned or intended so to be unto the said (*assignee*) his executors administrators and assigns in manner aforesaid *And further* That he the said (*assignor*) his executors and administrators and all other persons claiming or to claim any right title or interest of and in the said sum of £ or any part thereof by from or under or in trust for him the said (*assignor*) his executors and administrators shall and will at all times hereafter upon every request of the said (*assignee*) his executors administrators and assigns but at the costs and charges of the said (*assignor*) his executors and administrators do make and execute all such further assignments and assurances for more perfectly and absolutely assigning and assuring the said sum of £ unto the said (*assignee*) his executors administrators and assigns as by him and them or his or their counsel in the law shall be advised and required *Provided always* and it is hereby declared and agreed that after the expiration of twelve calendar months from the date hereof it shall be lawful for the said (*assignee*) his executors administrators or assigns absolutely to sell and dispose of the said sum of £ and premises hereby assigned freed from the proviso for redemption hereinbefore contained and all other equity of redemption whatsoever by public auction or private contract altogether or in

No. CLVII.
Money.

Habendum.

Proviso to make
assignment void.

Covenant to
pay.

No act to in-
cumber.

Good right to
assign.

Further as-
surance.

Power of sale.

No. CLVII.
Money.

parcels and generally in such manner as he the said (*assignee*) his executors &c. shall think proper And to assign and assure the said sum and premises or any part or parts thereof when sold unto the purchaser or purchasers thereof as he or they shall appoint And to receive the purchase-money for the same and thereout in the first place to pay the costs of such sale or sales and all other costs incident thereto and in the next place to satisfy the said sum of £ and interest hereby secured or such part thereof as shall then remain due And lastly after the payments aforesaid to pay over the ultimate residue to the said (*assignor*) his executors administrators or assigns *Provided also* and it is hereby further declared that any receipt or receipts which shall be given by the said (*assignee*) his executors administrators and assigns for any monies received under the power aforesaid shall be a legal and sufficient discharge or legal and sufficient discharges to the person or persons paying the same and fully release the said person or persons respectively from all obligation of seeing to the application of the said money and from all liability by reason of the misapplication or nonapplication thereof or any part thereof And that the purchaser or purchasers shall not be obliged to inquire whether default shall have been made in payment of the said sum of £ and interest or any part thereof contrary to the proviso or covenant hereinbefore contained *In witness &c.*

—◆—

Assignment of a Mortgage, see post, MORTGAGES.

—◆—

*Assignment of a Mortgage Term, and the Money due thereon,
 subject to the Trust to be declared by a Marriage Settlement,
 see post, SETTLEMENT.*

—◆—

No. CLVIII.
Mortgage.

No. CLVIII.

Assignment of a Mortgage from the Executors of a Mortgagee to a Person advancing the Money where the Mortgageor is not a Party.

Concurrence of
 mortgagor why
 necessary.

Obs. 1. An assignment of a mortgage is in reality the assignment of a debt, that debt being collaterally secured by a charge upon a real estate, *Matthews v. Walwyn*, 4 Ves. 118. A mortgagee may assign

without the mortgagor being a party, *Newport's Case*, Skinn. 483; but the safer course is, that the mortgagor should join in the transfer and acknowledge that the money is due. If an assignee pay arrears of interest it will not be considered principal, and bear interest, unless the mortgagor concur in the assignment, *E. of Macclesfield v. Fitton*, 1 Vern. 169; *Smith v. Pemberton*, 1 Ch. Cas. 68; *Achenhurst v. James*, 3 Atk. 271.

No. CLVIII.
Mortgage.

2. By the 13 & 14 Vict. c. 97, any transfer, assignment or disposition of any mortgage or other security, provided no further sum of money be added to the principal money or stock already secured, if such principal money or stock already secured shall not exceed 1400*l.*, the same duty as on a mortgage for the total amount of such principal money or stock; and if such principal money or stock should exceed in value 1400*l.*, then 1*l.* 15*s.*, and a further progressive duty.

This Indenture made &c. Between (*assignors*) executors of A. B. late of &c. deceased of the one part and (*assignee*) of &c. of the other part *Whereas* by an indenture bearing date the day of and made between (*mortgagor*) therein described of the one part and the said A. B. deceased of the other part It is witnessed that in consideration of the sum of £ to him the said (*mortgagor*) paid by the said A. B. he the said (*mortgagor*) did grant and demise unto the said A. B. his executors &c. *inter alia* All those the messuages &c. (*parcels*) *To Hold* the same unto the said A. B. his executors administrators and assigns from the day of then last past for the term of years under the yearly rent of a peppercorn *Subject* nevertheless to a proviso therein contained for redemption upon payment by the said (*mortgagor*) to the said A. B. of the sum of £ and interest on the days and times and in manner therein mentioned *And whereas* (*recite bond given by mortgagor*) *And whereas* the said principal sum of £ is still due and owing unto them the said (*assignors*) as executors aforesaid upon or by virtue of the said recited securities with an arrear of interest amounting to the sum of £ *And whereas* the said executors having occasion for the said principal money and interest due to them as aforesaid the said (*assignee*) hath at their request agreed to pay them the sum of £ upon having an assignment of the said principal sum of £ and interest due and to grow due thereon and of the said mortgaged hereditaments in manner hereinafter mentioned *Now this Indenture witnesseth* That in pursuance of the said in part recited agreement and in consideration of the sum of £ by the said (*assignee*) to the said (*assignors*) as executors as afore-

Mortgage
money still
unpaid.

Testatum.

No. CLVIII.
Mortgage.

said paid at or before the sealing and delivery of these presents in full of all principal money and interest now due and owing to them as executors as aforesaid upon or by virtue of the said securities the receipt whereof they the said (*assignors*) and each of them do and doth hereby acknowledge and of and from the same and every part thereof do and each of them doth acquit release and discharge the said (*assignor*) his heirs executors administrators and assigns for ever They the said (*assignors*) do and each of them doth by these presents assign unto the said (*assignee*) all that the said sum of £ so due and owing to them as executors as aforesaid and secured by the hereinbefore in part recited indenture of demise and bond And all money now due or which from henceforth shall grow due by way of interest for or on account of the said principal sum of £ And all the estate right title interest property claim and demand whatsoever of them the said (*assignors*) as executors as aforesaid of into or out of the same premises or any part thereof Together with full power and authority to ask demand sue for recover and receive and give effectual receipts and discharges for the said monies hereinbefore assigned or any part thereof in the names of the said (*assignors*) or any of them their or any of their executors or administrators *To Have Hold* receive and take the said principal monies and interest and all and singular other the premises hereinbefore assigned unto the said (*assignee*) his executors administrators and assigns for his and their own use and benefit *And this Indenture also witnesseth* That in further pursuance of the said agreement and for the considerations aforesaid they the said (*assignors*) do and each of them doth by these presents assign unto the said (*assignee*) his executors administrators and assigns all and singular the messuages lands tenements and hereditaments comprised in and demised by the said indenture of the day of as hereinbefore is mentioned with their rights easements and appurtenances And all the estate right title interest property claim and demand whatsoever of them the said (*assignors*) or any of them of in to out or upon the same premises or any part thereof *To Have and to Hold* the said messuages lands tenements hereditaments and premises unto the said (*assignee*) his executors administrators and assigns for all the residue now to come of the said term of years subject to the proviso for redemption now subsisting in the same premises *And* each of them the said (*assignors*) doth hereby for himself his heirs executors and administrators covenant with the said (*assignee*) his executors ad-

ministrators and assigns that they the said (*assignors*) have not made or done or knowingly permitted or suffered any act or thing whereby they are prevented from assigning the said premises hereinbefore assigned or any of them or any part thereof in manner aforesaid according to the true intent and meaning of these presents *In witness &c.*

No. CLVIII.
Mortgage.

ASSIGNMENTS OF PATENTS.

1. *Law of Patents.*
2. *Covenants in Assignments.*

3. *Stamp.*

SECT. 1. By the 21 Jac. 1, against monopolies, a power is reserved to the crown, in sect. 6, of granting a royal patent of privilege to the true and first inventor of any new manufacture for the sole working or making such manufacture for the space of fourteen years, by virtue whereof a property becomes vested in the patentee, which passes to his executors, and is assignable as any other personal chattel, except that, by one clause of the statute, no assignment of a patent can be made to more than five persons, which provision is now abolished, see 15 & 16 Vict. c. 83.

Law of patents.

2. In an assignment of this nature, the covenants must be so qualified by the usual words, "notwithstanding anything by him done to the contrary," as to restrict them to the acts of the assignor. This is of particular importance where the vendor is himself an assignee. It has been held, that a covenant in such an assignment for absolute right to convey is not restrained by the other parts of the deed, *Hesse v. Stevenson*, 3 B. & P. 565.

Covenants in assignments.

3. As to the stamp, see *ante*, ASSIGNMENTS, Pref. sect. 4.

Stamp.

No. CLIX.

Assignment of Shares in a Patent.

No. CLIX.
Patent.

This Indenture made &c. Between (assignor) of &c. of the one part and (assignee) of &c. of the other part Whereas by certain letters patent bearing date the &c. and duly enrolled in the High Court of Chancery (a) her present Majesty Did give and grant

Recital of letters patent.

(a) Letters patent granted after the 1st October, 1852, do not require enrolment, see 15 & 16 Vict. c. 83, s. 27.

No. CLIX. <i>Patent.</i>	unto M. K. his executors administrators and assigns the sole privilege of making paper from straw &c. for the term of 14 years and for the respective places in the said letters patent with a prohibition to all persons whatsoever other than the said M. K. his agents
Assignment to assignor.	and assigns to use the said invention <i>And whereas</i> by indenture bearing date the day of and made between the said M. K. of the one part and the said (<i>assignor</i>) of the other part For the considerations therein mentioned the said M. K. did grant unto the said (<i>assignor</i>) certain parts or shares of and in the said letters patent <i>To Hold</i> to him the said (<i>assignor</i>) his executors &c. for and during the then residue of the said term of 14 years
Contract for sale to assignee.	<i>And whereas</i> the said (<i>assignee</i>) hath contracted with the said (<i>assignor</i>) for the sale to him of the said shares in the said letters patent for the price or sum of £ <i>Now this Indenture witnesseth</i> That for and in consideration of the said sum of £ to the said (<i>assignor</i>) paid by the said (<i>assignee</i>) at &c. the receipt &c. He the said (<i>assignor</i>) <i>Doth</i> by these presents assign unto the said (<i>assignee</i>) <i>All those</i> the said parts or shares of and in the said letters patent And all the right title and interest of him the said (<i>assignor</i>) of in and to the said parts or shares of and in said letters patent <i>To Have and to Hold</i> the said parts and shares of and in the said letters patent with all benefit and advantage to arise therefrom unto the said (<i>assignee</i>) his executors &c. in as full ample and beneficial a manner as he the said (<i>assignor</i>) by virtue of the said letters patent and the said in part recited indenture of assignment might have had or held the same if these presents had not been made for and during all the rest and residue of the said term of 14 years <i>And the</i> (<i>assignor</i>) doth hereby for himself his heirs executors &c. covenant &c. with the said (<i>assignee</i>) his heirs administrators and assigns in manner following that is to say That for and notwithstanding (a) any act matter or thing to the contrary by him done or suffered he the said (<i>assignor</i>) hath good right full power and absolute authority to assign and convey the said parts or shares of and in the said letters patent And that he hath not by any means directly or indirectly forfeited any right which he ever had or might have had to the said parts or shares <i>And</i> that he the said (<i>assignee</i>) his executors, &c. shall and may by virtue of these presents have receive and take all the profits and advantages whatsoever that shall or may arise from the same parts or
Good right to assign shares.	
Quiet enjoyment.	

shares without any let hindrance denial or interruption from the said (*assignor*) his executors administrators and assigns And that he the said (*assignor*) his executors and administrators shall and will do &c. all and every other act &c. for assigning &c. the said parts, &c. unto the said (*assignee*) his &c. *In witness* &c.

No. CLIX.
Patent.

Further as-
surance.

ASSIGNMENT OF PEWS.

- | | |
|---|-------------------------|
| 1. <i>Right to Pews by Prescription or Faculty.</i> | 2. <i>How defended.</i> |
|---|-------------------------|

SECT. 1. The right to sit in a particular pew in a church arises either from prescription, as appendant to a messuage, or from a faculty or grant from the ordinary, for he has the disposition of all pews which are not claimed by prescription, *Gibs. Cod.* 221. No title can be good to a pew, either upon prescription or upon any new grant from the ordinary, to a man and his heirs, for the pew will always go with the house to him that inhabits it, 1 *Burn's Ecc. Law*, 360; *Stocks v. Booth*, 1 T. R. 432. By the general law of common right, all pews belong to the parishioners at large, but the distribution of seats among them rests with the ordinary, whose officers, the churchwardens, must place the parishioners according to their rank and station, but subject to the approbation of the ordinary. The incumbent has no authority in seating and arraying his parishioners, except as a member of the vestry, nor are the churchwardens bound to follow the directions of the vestry, *Pettman v. Bridger*, 1 *Phill.* 322. Persons having pews appurtenant to their houses cannot let them to non-resident persons, and thus by contract defeat the general right of the parish, *Walter v. Garner*, 1 *Hagg.* 317—319.

Right to pews
by prescription
or faculty.

2. In an action against the ordinary, the plaintiff must allege and prove repairs of the pew. If any repairs have been required within memory, they must be proved to have been made at the expense of the party setting up a prescriptive right. Mere occupancy does not annex pews to particular houses, 1 *Wils.* 326. A possessory right is not good against the churchwardens and the ordinary, but is sufficient to maintain a suit against a mere disturber, *Pettman v. Bridger*, *ub. sup.*

How defended.

No. CLX.

Pews.

No. CLX.

Assignment of a Pew.

Testatum.

Habendum.

Covenants from
assignor for
quiet enjoyment,
&c.Power of at-
torney.

Not to revoke.

Covenant from
assignee to pay
dues, &c.

This Indenture &c. Between (*assignor*) of &c. of the one part and (*assignee*) of &c. of the other part *Witnesseth* That for and in consideration of the sum of £ to &c. by &c. *He* the said (*assignor*) doth by these presents assign unto the said (*assignee*) his executors &c. *All that* pew situate &c. and numbered as heretofore was occupied by the said (*assignor*) and his family And all the estate &c. *To Have* &c. the said pew and all other the premises hereby assigned or intended so to be *To the intent* that the said (*assignee*) and his family shall and may from henceforth at all times hereafter peaceably and quietly enter into have use and occupy the said pew for all such uses and purposes as are customary in attending divine service *And* the said (*assignor*) doth for himself &c. covenant &c. that it shall and may be lawful for the said (*assignee*) peaceably and quietly to hold and enjoy the said pew hereby assigned or intended so to be without the let hindrance or disturbance of the said (*assignor*) or his family or his or their heirs executors administrators or assigns or any person or persons lawfully claiming or to claim the same or any sitting therein by from or under them or any of them *And* for the better securing to the said (*assignee*) the full and free benefit of the said pew and premises he the said (*assignor*) Doth hereby make constitute and appoint A. B. one of the proctors of the ecclesiastical court at to appear for him the said (*assignor*) in the said court or elsewhere on his behalf but at the costs and charges of the said (*assignee*) to give and acknowledge his consent and approbation and direction for confirming the said pew to the aforesaid (*assignee*) and his family or otherwise according to the practice of the said court he ratifying and confirming whatsoever the said A. B. or other proctor of the said court shall as proctor or attorney for the said (*assignor*) lawfully do or cause &c. in the premises *And further* the said (*assignor*) promises declares and agrees not to revoke annul or defeat these presents or any authority thereby given to the said proctor but from time to time to confirm and establish the same *And* the said (*assignee*) doth hereby for himself his executors &c. covenant &c. that he the said (*assignee*) his executors &c. shall and will well and truly pay all dues rates and contributions which may be hereafter lawfully made and demanded for and concerning the said pew *And* do

and perform all needful repairs decorations and improvements whatsoever at his own costs and charges, and wholly indemnify the said (*assignor*) his heirs executors and administrators therefrom *In witness &c.*

No. CLX.
Pews.
and indemnify
assignor.

ASSIGNMENTS OF POLICIES OF INSURANCE.

1. Policies assignable.
2. Life Insurances void, when.
3. Sums on Policies not apportionable.

SECT. 1. Policies of insurance, although *choses in action*, may be assigned at law as well as in equity, *Delany v. Stoddart*, 1 T. R. 26. Such assignments are for the most part inserted in other deeds; but where a policy is assigned by way of mortgage, and in some other cases, a separate deed is most convenient.

Policies assign-
able.

2. By the 14 G. 3, c. 48, any insurance made on the life or lives of any persons wherein the persons for whose use or on whose account the policy is effected shall have no interest, is void. And it has been held under this statute, that a policy of insurance effected by a father on the life of his son is void, he having no pecuniary interest therein, *Halford v. Kymer*, 10 B. & C. 724.

Life insurances
void, when.

3. Annual sums payable on any policy of insurance are not subject to the law of apportionment by 4 & 5 W. 4, c. 32, sect. 3.

Sums on poli-
cies not appor-
tionable.

No. CLXI.

Assignment of a Policy of Insurance on a Ship by an Executor.

No. CLXI.
Policies of
Insurance.

Obs. The 6 Geo. 1, c. 18, which limited the privilege of granting policies of insurance upon ships and goods to the Royal Exchange and London Assurances, is so far repealed by 5 Geo. 4, c. 114, as to make it lawful for other corporate bodies to make such policies.

To all &c. (*assignor*) of &c. executor of the last will and testament of A. B. deceased sendeth greeting *Whereas* the said A. B. by a certain writing or policy of insurance granted by the Insurance Company bearing date the &c. and numbered under the hands and seals of directors of the said company insured the sum of £ upon the ship

Recital of
policy.

No. CLXI.
Policies of
Insurance.

or vessel for her voyage from A. to L. *And whereas (assignee)* of &c. hath agreed with the said (*assignor*) for an absolute assignment to him of the said policy of insurance for the sum of £

Now these Presents witness That for and in consideration of &c. He the said (*assignor*) doth by these presents assign unto the said (*assignee*) *All that* the said policy of insurance so effected by him the said A. B. deceased and all and every sum or sums of money recoverable or to be received upon or by virtue of the said policy and all benefit and advantage thereof And all the right title interest property claim and demand whatsoever of him the said (*assignor*) as executor as aforesaid together with full power and authority to ask &c. (see *Assignment of a Debt*) *To have hold receive and take* the said policy of insurance and all sums of money recoverable thereon and all and singular other the premises hereby assigned or intended so to be unto the said (*assignee*) his executors &c. in as full ample and beneficial a manner as he the said (*assignor*) might or could have done if these presents had not been made *And* the said (*assignor*) for himself &c. doth hereby covenant &c. with &c. the said (*assignee*) that he the said (*assignor*) have done no act matter or thing whereby the said policy of insurance can shall or may be charged or incumbered in any way whatsoever *In witness &c.*

Habendum.

No act to in-
cumber.

Assignment of a Policy of Insurance to Trustees of Settlement,
see *post*, SETTLEMENTS.

ASSIGNMENTS OF REVERSIONARY INTERESTS.

1. *Reversionary Interest, when assign-
able or otherwise.*
2. *Effect of Assignments by a Husband.*

Reversionary
interests, when
assignable or
otherwise.

SECT. 1. Reversionary or expectant interests are not assignable at law, *Jones v. Roe*, 3 T. R. 88; 1 Fonbl. 217. And courts of equity will set aside assignments by expectant heirs, on the ground of inad-

quacy of consideration, 9 Ves. 246; 16 Ves. 512; 1 Fonbl. *ub. sup.*; *Reversionary Interests.*
Fox v. Wright, 6 Madd. 111.

2. An assignment by a man of a contingent interest in right of his wife, will not bind the wife, either at law or in equity, if she survive him before he has reduced it into possession, *Ld. Carteret v. Paschall*, 3 P. Wms. 199; *Purdew v. Jackson*, 1 Russ. 1; *Honner v. Morton*, 3 Russ. 65. *Effect of assignment by a husband.*

No. CLXII.

Assignment of Reversion.

No. CLXII.
Reversion.

This Indenture made &c. Between (assignor) of &c. of the one part and (assignee) of &c. of the other part Whereas the said (assignor) under and by virtue of an indenture bearing date the &c. (and made previous to the marriage of I. D. deceased and S. his wife her father and mother) between I. H. of &c. since deceased and the said S. his only daughter of the first part the said I. D. then of &c. since deceased of the second part and (trustees) trustees named by and on behalf of the said S. and both since deceased of the third part became entitled to the reversionary interest of and in the capital sum of £ Three per cent. Consolidated Bank Annuities expectant upon the decease of S. D. of &c. And whereas the said capital sum &c. now stands in the names of (new trustees) in the books of the Governor and Company of the Bank of England And whereas the said (assignee) hath contracted with the said (assignor) for the absolute purchase of all her reversionary right title and interest of and in the capital sum of £ Three per cent. &c. expectant upon the decease of the said S. D. at or for the price or sum of £ Now this Indenture witnesseth That for and in consideration of the said sum of £ to the said (assignor) by the said (assignee) well &c. paid at &c. she the said (assignor) Doth by these presents assign unto the said (assignee) All that the remainder or reversion of her the said (assignor) expectant upon and to take effect immediately upon and after the decease of the said S. D. of and in all that capital sum of £ Three per cent. &c. now standing in the names of the said (T.) as aforesaid in the books of the Governor and Company of the Bank of England and all the interest dividends and proceeds thenceforth to grow due and payable thereon And all the right

No. CLXII. &c. *To Have* &c. the said reversionary sum of £ and
Reversion. all other the premises hereby assigned &c. unto the said (*as-*
Habendum. *signee*) his executors &c. to and for his and their own absolute
use and benefit *And* &c. (*covenants against incumbrance for*
good right to assign and for further assurance, see ante, Assign-
ment of a Sum of Money) *In witness* &c.



No. CLXIII.

No. CLXIII.

*Shares.**Assignment of a Share in a Company.*

See 7 & 8 Vict. c. 110.

I A. B. of in consideration of paid to me by
C. D. of do hereby transfer to the said C. D. share
[or shares] numbered in the undertaking called the
Company to hold unto the said C. D. his executors adminis-
trators and assigns subject to the several conditions on which I
hold the same at the time of the execution thereof *And* I the
said C. D. do hereby agree to take the said share [or shares]
subject to the same conditions and to the provisions of the deed
or deeds of settlement of the same company *As witness* our
hands and seals the day of



As to Assignments of Shares in Joint-Stock Companies incor-
porated by Act of Parliament, see "The Companies Clauses
Consolidation Act, 1845."



No. CLXIV.

No. CLXIV.

*Shares.**Assignment of Shares in a Copper Mine.*

Testatum.

This Indenture made &c. Between (*assignor*) of &c. of the
one part and (*assignee*) of &c. of the other part *Witnesseth* That
the said (*assignor*) for and in consideration of &c. *Doth* bargain
sell and assign unto the said (*assignee*) *All those* two full sixty-
fourth parts shares or doles [the whole into sixty-four equal
parts shares or doles to be considered as divided] of and in
that copper mine commonly called &c. of or to which the said
(*assignor*) is possessed or entitled by virtue of an indenture of

&c. Together with the like parts or shares of and in all copper copper ore lead tin tin ore and all or any other metals and minerals now or hereafter to be found broken or brought up to grass in upon or out of the said copper mine or adventure or any part thereof And also of and in all tackle tools whims engines stamps mills and implements of mining whatsoever And of and in all ways paths passages easements profits commodities advantages rights members and appurtenances And all the estate &c. *To have* &c. the said two &c. and all and singular other the premises hereby assigned or intended so to be unto the said (*assignor*) his executors administrators and assigns according to the custom of the stannaries of Cornwall from henceforth for and during all the residue of the term of years from the day of when the original grant was made from the lords of the soil subject to the payment of the proportionable part of the lord's and bounder's dues being one-twelfth part and also to two full sixty-fourth parts or shares of all costs and charges henceforth to accrue in working trying and prosecuting the said mine and premises and to the articles regulations and agreements in the said indenture contained or that hereafter may be made or entered into pursuant to the same for facilitating and prosecuting the said mine and the affairs thereof *And* the said (*assignor*) for himself his executors &c. doth hereby covenant &c. with the said (*assignee*) his executors administrators and assigns in manner following that is to say That he the said (*assignor*) is lawfully possessed of or rightfully entitled unto the said two sixty-fourth parts &c. And that for and notwithstanding any thing to the contrary by him done he hath good right and full power to grant and assign the said two &c. And that it shall and may be lawful to the said (*assignee*) his executors &c. from henceforth peaceably and quietly to have and hold the same and receive and take the dividends proceeds and profits thereof without the let &c. of the said (*assignor*) his &c. (see *Assignment of a Lease*) subject as aforesaid And that the said two &c. parts &c. hereby assigned &c. now are free and clear and freely clearly and absolutely acquitted exonerated and discharged of from and against all and all manner of gifts grants bargains sales assignments leases mortgages charges and incumbrances whatsoever made &c. by the said (*assignor*) his executors &c. and all and every other person &c. *And* that the said (*assignor*) and all and every other person claiming or to claim under him shall and will from time to time and at all times hereafter at the reasonable

No. CLXIV.
Shares.

Covenants.

Lawfully possessed.

Good right to assign.

Quiet enjoyment.

Free from incumbrances.

Further assurance.

No. CLXIV. request &c. make do &c. (*for further assurance, see Assignment of a Lease*). In witness &c.

Shares.

—◆—

CLXV.

No. CLXV.

Stock.

Assignment of Growing Crops for securing a Sum of Money.

Stamp.

Obs. An assignment of stock and crops in trust to sell, and with the proceeds to be produced by such sale to discharge debts due to the trustees and others, has been held to require, under the 55 Geo. 3, c. 184, not an *ad valorem*, but a common deed stamp only, *Coates v. Perry*, 6 Moore, 188; *S. C.* 3 B. & B. 48.

Recital of debt.

This Indenture made &c. Between (*assignor*) of &c. of the one part and (*assignee*) of &c. of the other part *Whereas* the said (*assignor*) stands justly indebted to the said (*assignee*) in the sum of £ for money lent and advanced *And whereas* the said (*assignee*) hath commenced an action at law against the said (*assignor*) in her Majesty's Court of Common Pleas at Westminster

Agreement to sign cognovit.

and the said (*assignor*) hath been held to bail thereon *And whereas* the said (*assignor*) hath applied to the said (*assignee*) and requested him to suspend any further proceedings in the said action and hath proposed to confess the same by *cognovit* under his hand with liberty for the said (*assignor*) to enter up judgment thereon in case default shall be made in payment of the said sum of £ contrary to the covenant hereinafter contained *And whereas* the said (*assignee*) having suspended all proceedings in the said action the said (*assignor*) hath signed a *cognovit* as hereinbefore proposed and for the better securing the payment of the said sum of £ hath also agreed to assign the several crops now growing on his farm in manner hereinafter mentioned

Testatum.

Now this Indenture witnesseth That in consideration of the sum of £ so due and owing from the said (*assignor*) to the said (*assignee*) as aforesaid He the said (*assignor*) doth by these presents assign unto the said (*assignee*) his executors &c. *All* and singular the crops of corn and grass now growing arising and being in and upon the farm situate lying and being in the parish of aforesaid and consisting of the following particulars that is to say acres of wheat acres of barley acres of meadow grass acres of beans and acres of oats &c. (*parcels*) and all other crops now growing on the said farm And all the right &c. of him the said (*assignor*) in to out of or upon the said crops of wheat and other crops and premise hereby

assigned with full liberty for the said (*assignee*) his servants workmen and agents with horses carts and carriages at all times hereafter as long as the said crops of wheat and other crops shall be growing standing or lying on the said several pieces of land to enter upon the same to see the state of such crops and for the purpose of cutting reaping and carrying away the same and for all necessary purposes *To Have Hold* receive and take all and singular the said crops and premises hereby assigned or intended so to be in as full large and ample a manner to all intents and purposes as if possession had been taken of the same by the course of law or as the said (*assignor*) might have held and enjoyed them if these presents had not been made *Upon Trust* (a) nevertheless in case default shall be made in payment of the said sum of £ on the day and in the manner as in the covenant hereinafter is mentioned and expressed that the said (*assignee*) his executors administrators and assigns do and shall sell the several crops hereby assigned And do and shall stand possessed of and interested in all sums of money to arise from such sale or sales *Upon Trust* in the first place to reimburse himself or themselves in all costs and expenses which shall be incurred or which he or they shall pay sustain or be put unto in effecting the sale or sales as aforesaid And in the next place that he do and shall pay or reimburse himself (b) the said sum of £ with interest for the same as in the covenant hereinafter is mentioned and expressed And after payment thereof then in trust to pay and make over the residue and surplus [if any] unto the said (*assignor*) his executors administrators and assigns And it is hereby declared and

No. CLXV.
Stock.

Declaration of
trusts.

Indemnity to
assignor.

(a) If there be a trustee, and it be so agreed, say, "That he the said (T.) his executors administrators and assigns do and shall at any time hereafter upon the request of the said (C.) her executors administrators and assigns either absolutely sell and dispose of the said crops of corn herein-before assigned or intended so to be as the same are now growing to any person willing to become the purchaser thereof or do and shall permit the same crops to remain on the land until they are ripe and then do and shall cut and reap the same and after setting out the tithes thereof (if required) do and shall carry away and absolutely dispose of the residue of the produce of the said crops as he the said (T.) shall think fit with full power for you or him to purchase in the said growing crops at any public auction and to resell the same at any future auction or otherwise without liability for any loss to accrue thereby and do and shall stand and be possessed of &c." see above.

(b) If there be a trustee say, "In the next place do and shall pay the said (C.) her executors administrators and assigns the said sum of £ with interest &c." see above.

No. CLXV.
Stock.

Contracts and
receipts to be
valid.

Not answerable
for losses.

agreed by and between the parties to these presents that for the purpose of carrying into execution the trust aforesaid it shall be lawful for the said (*assignee*) to make do and execute all contracts agreements acts matters and things as shall be necessary without any further consent or concurrence of the said (*assignor*) And that the receipts of the said (*assignee*) his executors &c. for all and every sum and sums of money which shall be paid and payable for the said crops by virtue of these presents shall be valid and sufficient discharges to the person or persons paying the same *And further* it is hereby declared and agreed that no neglect or default shall be imputable to the said (*assignee*) his executors administrators or assigns for not proceeding to the sale of the said trust premises unless he or they shall be required so to do by some writing under the hand of the said (*assignor*) his executors &c. and that the said (*assignee*) his executors &c. shall not be answerable for any loss or damage which may happen to the said crops or the several pieces of land whereon they shall be growing unless occasioned by his or their wilful default and that he and they shall be respectively answerable for such sum or sums of money only as he or they shall actually receive *In witness &c.*



No. CLXVI.

No. CLXVI.
Terms.

Assignment of Chattels real, to which a Person is entitled in Right of his Wife, in Trust to Re-assign the same.

Obs. 1. Terms for years and other chattels real, of which a wife is or may be possessed during her coverture, will survive to her, unless the husband exercise some act of ownership in his lifetime, as by assignment or otherwise. He cannot dispose of them by will until he has so done, as the will does not take effect until after his death, and the law vests the term in the wife immediately after the decease, Co. Litt. 351 b; Com. Dig. Baron and Feme, E. 2; 1 Rep. Hus. & W. 196.

2. As to the stamp on assignments, not charged as conveyances, see *ante*, ASSIGNMENTS, Pref. sect. 5.

This Indenture &c. Between (*Husband*) of &c. of the one part and (*Trustee*) of &c. of the other part *Whereas* the said (*H.*) as husband of M. his wife formerly M. T. spinster is possessed of or entitled to divers messuages and for divers terms of years and is desirous of becoming the absolute owner of the same to the intent

that he may have the right of settling and disposing of the same by will or in any other manner as he shall think fit *Now* for the purposes aforesaid He the said (*H.*) *Doth* by these presents assign unto the said (*T.*) his executors &c. *All those* the messuages or tenements and lands whatsoever of which he the said (*H.*) is possessed or in which he is interested in right of his wife or as her husband for any term of years or any other chattel interest whatsoever with their and every of their appurtenances And all the estate &c. of him the said (*H.*) *To Have and to Hold* the said messuages &c. and all and singular other the premises hereby assigned and every part and parcel thereof with their appurtenances unto the said (*T.*) his executors administrators and assigns henceforth for the several residues and remainders of the several terms for years or other interests which the said (*H.*) hath in the said messuages respectively now to come and unexpired for and during all such times terms for years and other interests as the said (*H.*) now hath in the said messuages &c. respectively as fully and beneficially to all intents and purposes as the said (*H.*) can assign or otherwise assure the same *Nevertheless* upon trust that the said (*T.*) his executors administrators and assigns do and shall immediately after the execution of these presents re-assign the said premises hereby assigned or otherwise assured with their and every of their appurtenances and all his and their estate right title &c. unto the said (*H.*) his executors administrators and assigns for all the then residues and remainders of the several terms for years or other interests of the said (*T.*) his executors administrators and assigns therein *In witness &c.*

No. CLXVI.
Terms.

Habendum.

No. CLXVII.

No. CLXVII.

Re-assignment by Indorsement, in Pursuance of the foregoing Deed.

Know all Men by these Presents That in execution of the trust reposed in him the within-named (*Trustee*) in and by the within-written indenture He the said (*T.*) *Doth* by these presents assign unto the said (*H.*) his executors &c. *All* the messuages &c. whatsoever which by the within-written indenture were and are assigned or otherwise assured by the said (*H.*) to

No. CLXVII.

Terms.

the said (*T.*) or intended so to be and every part and parcel of the same with their and every of their appurtenances And also all the estate right title interest property power claim and demand whatsoever of him the said (*T.*) of in to upon and over the said messuage by force or virtue of the said within-written indenture or otherwise howsoever Together with the same indenture *To Have and to Hold* the said messuages &c. and all and singular other the premises hereby assigned and every part &c. with their appurtenances unto the said (*H.*) his executors administrators and assigns henceforth for the several residues and remainders of the several terms for years and other interests which he the said (*T.*) hath in the said messuages respectively by virtue of the within-written indenture and for and during all such time or times &c. and other interests as the said (*T.*) now hath in the said messuages &c. respectively by virtue of the same indenture as fully and beneficially as the said (*T.*) can assign or otherwise assure the same *In witness, &c.*



No. CLXVIII.

No. CLXVIII.

Assignment of a Wife's Term for Years by a Husband and a Wife to a Purchaser.

Obs. A man having an absolute right to dispose of a wife's term of years (see last *precedent*) may do so alone, but it is most usual to make the wife a party in an assignment to a purchaser.

This Indenture made &c. Between (*assignor*) of &c. and M. his wife [before marriage M. R. spinster] of the one part and (*assignee*) of &c. of the other part *Whereas* by an indenture bearing date &c. and made or expressed to be made between J. H. therein described of the one part and the said M. [then M. R. spinster] of the other part For the considerations therein mentioned the said J. H. did demise and lease unto the said M. R. her executors administrators and assigns *All that* messuage &c. with the appurtenances *To Hold* the same unto the said M. R. her executors &c. from the day of last past for and during &c. from thence next ensuing and fully to be complete and ended subject to the rents covenants and agreements therein reserved and contained to be paid observed and performed *And whereas* the said (*assignor*) with the privity and approbation of the said M. his wife hath contracted and agreed

with the said (*assignee*) for the absolute sale to him of the said messuage &c. for the residue &c. *Now this Indenture witnesseth* that in pursuance of &c. and in consideration of the sum of £ to the said (*assignor*) in hand &c. by the said (*assignee*) well &c. paid the receipt &c. He the said (*assignor*) with the privity of M. his wife testified &c. *Doth* by these presents assign unto the said (*assignee*) his &c. *All that* &c. (see *Assignment of a Lease*) And all the estate &c. *To Have and to Hold* the said messuage &c. unto the said (*assignee*) his &c. And the said (*assignor*) for himself &c. doth hereby covenant &c. in manner following that is to say That for and notwithstanding any act &c. by him the said (*assignor*) and M. his wife made &c. (*lease is good and subsisting, see Assignment of a Lease*) And that for and notwithstanding any such act deed matter or thing as aforesaid he the said (*assignor*) and M. his wife or one of them have or hath &c. in themselves himself or herself (*good right to assign &c.*) And that it shall be lawful for the said (*assignee*) his &c. peaceably and quietly to have &c. without the lawful let suit &c. of or by him the said (*assignee*) and the said M. his wife or either of them their or either of their executors &c. And that free and clear and for ever discharged or otherwise by the said (*assignor*) his heirs executors or administrators well and sufficiently saved defended and kept harmless and indemnified of from and against all estates &c. whatsoever either already had &c. or hereafter to be had &c. by the said (*assignor*) and M. his wife or either of them their or either of their executors or administrators or by any person or persons lawfully or equitably claiming or to claim by from under or in trust for them or any of them And further that he the said (*assignor*) his executors &c. and all and every other person or persons having or claiming &c. by from or under or in trust for him the said (*assignor*) and M. his wife or either of them their or either of their executors &c. shall and will make and do &c. (*acts for further assurance*) And also that he the said (*assignor*) his executors and administrators shall and will pay the rent reserved by the aforesaid in part recited indenture of lease up to and including Midsummer-day now next ensuing and shall and will save &c. the said (*assignor*) his executors administrators and assigns and his and their lands tenements goods and chattels respectively from the same rent and from all costs and expenses on account of the breach or non-performance of any of the covenants or agreements in the said in part recited indenture on the part of the said M. her executors administrators or assigns

No. CLXVIII.
Terms.

Habendum.

Covenants.

A subsisting
lease.

Good right to
assign.

Quiet enjoy-
ment.

Further assu-
rance.

No. CLXVIII. to be performed from the commencement thereof And the said
Terms. (assignee) doth hereby for himself his executors &c. covenant &c.
 with the said (assignor) that he the said (assignee) shall and will
 &c. pay the yearly rent &c. and perform fulfil and keep all and
 every the covenants and agreements in the said &c. in part recited
 indenture of lease contained on the part of the tenant or lessee
 from henceforth to be performed and from the same rents cove-
 nants and agreements and all costs and expenses on account of
 any breach neglect or default of or in payment or performance
 thereof as aforesaid shall and will save harmless and keep indem-
 nified the said (assignor) and M. his wife and each of them and
 each of their executors &c. *In witness &c.*

Covenant from
 assignee to
 indemnify as-
 signor.

ATTESTATIONS.

SECT. 1. An attestation of a deed is a memorandum by the wit-
 nesses who saw the same sealed and delivered, and who are to indorse
 or underwrite their names thereon. A deed sealed and delivered, it
 is said, may be good, for the seal is the essential part of the deed, 1
 Inst. 7; 10 Co. 93. In attestations of the execution of powers of
 appointment, it is necessary to insert the word "signed," if the ap-
 pointment be required to be signed.

2. By the Statute of Frauds, 29 Car. 2, c. 3, all devises and bequests
 of any lands or tenements devisable by the Statute of Wills, or by
 any particular custom, are required to be signed by the party devising
 the same, or some other person in his presence, and by his express
 directions, and to be attested and subscribed in presence of the devisor,
 by three or four credible witnesses. By the 7 Will. 4 & 1 Vict. c. 26,
 repealing sects. 5, 6, 19, 20, 21 and 22 of that statute, the signature
 of the testator must be made or acknowledged by him in the presence
 of two instead of three witnesses, who must be present at the same
 time.

No. CLXIX.

No. CLXIX.

Deaf and Dumb. *Attestation of the Execution of a Deed by a Person Deaf and Dumb.*

The within-written indenture was signed sealed and delivered
 [being first duly stamped] by the within-named A. B. who being

deaf and dumb but capable of reading the same was first read over by him and he seemed perfectly to understand the same in the presence of

No. CLXIX.
*Deaf and
Dumb.*

C. D. of &c.
E. F. of &c.



No. CLXX.

No. CLXX.
Blind.

Attestation of the Execution of a Deed by a Blind Person.

The within-written indenture was signed sealed and delivered by the within-named A. B. [having been first duly stamped] and he being blind the same indenture was carefully and audibly read over to him in the presence of

C. D. of &c.
E. F. of &c.



No. CLXXI.

No. CLXXI.
Attorney.

Attestation of the Execution of a Deed as the Attorney.

Signed sealed and delivered by the within-named C. D. as the attorney of the within-named A. B. [being first duly stamped] in the presence of

E. F. of &c.
G. H. of &c.



No. CLXXII.

No. CLXXII.
*Power of
Attorney.*

Attestation and Testimonium of a Deed executed under a Power of Attorney from Two.

Signed sealed and delivered [being first duly stamped] by the within-named A. B. as the attorney of the within-named C. D. and E. F. and in the names and as the several acts and deeds of the said C. D. and E. F. in the presence of

G. H. of &c.
I. K. of &c.



No. CLXXIII.

Testimonium.

No. CLXXIII.

The Testimonium.

In witness whereof A. B. of &c. hath by virtue of a deed-poll or letter of attorney under the hands and seals of the said C. D. and E. F. bearing date the day of 18 and hereunto (a) annexed put the hands and seals of the said C. D. and E. F. the day and year first above written.

C. D. (*seal*) by A. B. his attorney.E. F. (*seal*) by A. B. his attorney.

No. CLXXIV.

Interlineations.

No. CLXXIV.

Attestations where there happen to be Interlineations, &c.

Signed sealed and delivered (being first duly stamped) by the within-named A. B. the words (*copy the words*) having been previously interlined in the fourth and fifth lines of the first skin (or "written over obliterations between" &c. *as the case may be*) in the presence of &c.



No. CLXXV.

As Attorney.

No. CLXXV.

Attestation of a Deed executed by one Party in his own Right, and as the Act of another of the Parties by Virtue of a Power.

Signed sealed and delivered (being first duly stamped) by the above-named [*or* "within-written"] A. B. with his own name and as his own act and deed and afterwards as the attorney and in the name and as the act and deed of the within-named C. D. by virtue of the authority given to him the said A. B. for that purpose by the indenture of assignment from the said C. D. to him the said A. B. and which is recited in this instrument in the presence of &c.



No. CLXXVI.

Will.

No. CLXXVI.

Attestation of a Will.

Signed published and declared by the said testator as and for his last will and testament in the presence of us present at the

(a) If the letter of attorney concern other property, a true copy of the same should be annexed.

same time who in his presence and at his request and in the presence of each other have hereunto subscribed our names to each sheet as witnesses thereto (*and if there are two parts say, "as we have also done to each sheet of another part of his will at the same time"*). No. CLXXVI.
Will.

No. CLXXVII.

Testimonium of a Will.

No. CLXXVII.

Testimonium.

In testimony (or "*In witness*") whereof I the said A. B. the testator have to this my last will and testament contained in sheets of paper set my hand the day of in the year of our Lord 18 .

ATTORNMENTS.

1. *Definition of an Attornment.* | 2. *Stamp Duty on Attornment.*

SECT. 1. Attornment is, properly, the acknowledgment by the tenant of a new lord, or the agreement of the tenant to the grant of the seignory of a rent, or of a reversion and remainder, Co. Litt. 309 a. Since the 4 & 5 Ann. c. 16, and 11 Geo. 2, c. 19, an attornment is no longer necessary to the validity of a grant, and is therefore seldom made, except occasionally to mortgagees, or in the case of a recovery in ejectment. Definition of an attornment.

2. A mere attornment, not containing an agreement to pay such rent as shall be agreed upon, requires no stamp, *Cornish v. Searell*, 8 B. & C. 47. Stamp duty on attornment.

No. CLXXVIII.

Attornment from a Tenant to a Mortgagee in Possession by Ejectment.

No.
CLXXVIII.
Mortgagee.

Know all Men that I the within-named (*tenant*) did on the day of last past attorn and become tenant to the within-named (*mortgagee*) and agree (*a*) to pay such rent and at

(a) As to the stamp, see *supra*, sect. 2.

No.
CLXXVIII.
Mortgagee.

such times as are therein mentioned and in testimony thereof did give one shilling in the name of attornment in the presence of whose names are hereunto subscribed.

No. CLXXIX.

No. CLXXIX.

Several Tenants. Attornment of several Tenants by Direction of the Mortgagor.

To all to whom these presents shall come A. B., C. D. and E. F. send greeting Whereas A. B. holds and rents of the said (mortgagor) a certain farm called &c. and situate &c. and C. D. holds &c. and E. F. holds &c. And whereas the said several farms are now in mortgage to (mortgagee) of &c. and the said (mortgagor) is willing and desirous that the said (mortgagee) should have possession of the respective premises Now Know ye that the said A. B., C. D. and E. F. by the direction of the said (mortgagor) testified by his being a party to and signing these presents do hereby severally agree to pay over the several rents due and payable for their respective farms and each of them the said A. B., C. D. and E. F. have given one shilling in the name of attornment and in part payment of the said rent In witness &c.

AUCTIONS.

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|---|---|
| <ol style="list-style-type: none"> 1. <i>What constitutes an Auction.</i> 2. <i>Sales by Auction within the Statute of Frauds.</i> 3. <i>Licence to sell by Auction.</i> 4. <i>Particulars and Conditions of Sale.</i> 5. <i>Contract of the Sale.</i>
<i>Auctioneer Agent for both Parties.</i>
<i>Auctioneer an Agent without written Authority.</i>
<i>Implied Authority.</i>
<i>Auctioneer must not exceed his Authority.</i> 6. <i>Biddings at the Sale.</i>
<i>Biddings by competent Persons.</i>
<i>Private Biddings how far admissible, or otherwise.</i> | <ol style="list-style-type: none"> 7. <i>Deposit Part of Purchase Money.</i>
<i>Payment of Deposit to Auctioneer.</i>
<i>Interpleader Bill by Auctioneer.</i>
<i>Relief under Interpleader Act.</i>
<i>Effect of Auctioneer's Insolvency.</i>
<i>Investment of the Deposit.</i> 8. <i>Auctioneer's Liability as to Charge of Goods.</i>
<i>Proceeds of Sale.</i> 9. <i>Remuneration of Auctioneer.</i> 10. <i>Validity of the Contract.</i>
<i>Particulars and Conditions of Sale.</i>
<i>Biddings at the Sale.</i>
<i>Provisions of the Statute of Frauds.</i>
<i>Signing the Contract.</i>
<i>Contract entire or otherwise.</i> |
|---|---|

What constitutes an auction.

SECT. 1. An auction is a sale by competition, where the highest bidder is the purchaser, but to constitute a sale by auction it is not

necessary that it should be conducted in any particular manner. The words of the 19 Geo. 3, c. 56, s. 3, are "by outcry, knocking down of hammer, by candle, by lot, by parcel, or by any other mode of sale at auction, or whereby the highest bidder is deemed to be the purchaser," and therefore a sale in a private room, where several persons were present, and a bargain was struck with one who offered the most, was held to be a sale within the auction laws, *Walker v. Advocate-General*, 1 Dow. 114; and anything in the nature of a bidding is within the act, as candlestick biddings, *R. v. Taylor*, 13 Price, 636; *S. C. McClellan*, 362; dumb biddings and the like, *Cruso v. Crisp*, 3 East, 340; but it appears that where property is put up to sale, and there is no person that bids, this will not be deemed an auction within the act, the bare proposal of a sum by an agent for the owner not being held to be a bidding, *ib.*, and see *Capp v. Topham*, 6 East, 392; *S. C. 2 Smith*, 443.

Auctions.

The law of auctions is affected not only by the revenue laws, but also by the general law regulating the transfer of property real and personal. In this twofold point of view it embraces various matters as regards the Statute of Frauds, the licence to sell by auction, the conditions of sale, the conduct of the sale, the biddings at the sale and the deposit.

What comprehended under the law of auctions.

2. It was for some time a matter of question, whether sales by auction were within the Statute of Frauds. In one case it was expressly decided that they were not, *Simon v. Motivos*, 3 Burr. 1921; but that case has been overruled by a variety of subsequent decisions, and it is now settled that the provisions of that act must be complied with in sales by auction, whether of real or personal estate, in the same manner as in sales by private contract.

Sales by auction within the Statute of Frauds.

3. No one can sell anything by auction without taking out an excise licence. The enactments regulating the licence are contained in the 19 Geo. 3, c. 56; 43 Geo. 3, c. 130; 6 Geo. 4, c. 81; 7 & 8 Geo. 4, c. 53; 4 & 5 Will. 4, c. 51; and 8 & 9 Vict. c. 15.

Licence to sell by auction.

4. The particulars or conditions of sale, which more immediately concern the parties themselves, are of the first importance, and require to be drawn up with special care.

Particulars and conditions of sale.

5. The conduct of the sale rests with the auctioneer, who at all times was held to be an agent for the vendor, *Bexwall v. Christie*; and according to the later decisions, he has been held to be also an agent for both parties, *Emerson v. Heelis*, 2 Taunt. 38; *Kemys v. Proctor*, 3 V. & B. 57; *S. C. 1 J. & W. 350*; and as an agent he cannot delegate his authority, and cannot therefore authorize any one, not even his own clerk, to sell without the consent of the owner of the property, *Coles v. Trecothick*, 9 Ves. 236; although for some purposes the clerk may also be an agent for both parties as well as the

Conduct of the sale.

Auctioneer an agent for both parties.

<u>Auctions.</u>	auctioneer himself, <i>Payne v. Cave</i> , 3 T. R. 148; <i>Gosbell v. Archer</i> , 2 Ad. & Ell. 500; <i>S. C.</i> 4 Nev. & Man. 485; <i>S. C.</i> 1 Har. & Woll. 31.
Auctioneer an agent without written authority.	No written authority is necessary to constitute the auctioneer an agent for both parties, the seller giving authority by his instructions to sell, and the buyer, to whom the conditions of sale, pasted on the auctioneer's box, are a sufficient notice of the terms by his bidding aloud, <i>Simon v. Motivos</i> , 1 Bl. 599; <i>S. C.</i> 3 Burr. 1921; <i>Hinde v. Woodhouse</i> , 7 East, 558; <i>Emerson v. Heelis</i> , 2 Taunt. 38; <i>Shelton v. Livius</i> , 2 Tyrw. 436; <i>Bird v. Boulter</i> , 4 B. & Ad. 443; and an authority may be implied by certain acts without any verbal instructions, as if the owner of a horse send it to a common repository for the sale of horses, or the proprietor of goods send them to an auction room, <i>Pickering v. Bush</i> , 15 East, 42; and so an auctioneer's clerk can bind the purchaser as well as the vendor by an entry made in their presence, as by their silence when the hammer falls he is considered to have their authority to execute the contract on their behalf, <i>Farebrother v. Simmons</i> , 5 B. & A. 333.
Implied authority.	An auctioneer, in conducting a sale by auction, cannot deviate from the strict terms of his instructions; if he does, he will be personally amenable for the consequences, <i>Powell v. Sadler</i> , cited Paley, P. & A. 80; and therefore if he sell by private contract property intrusted to him to sell by auction, he will be held liable, <i>Daniel v. Adams</i> , Amb. 495; so if the auction duty attaches on a sale through his neglect, he cannot recover the same, <i>Capp v. Topham</i> , 6 East, 392; <i>Jones v. Nanney</i> , 13 Price, 76; <i>S. C.</i> M'Clel. 25. As to the duty and liability of the auctioneer with regard to the biddings at the sale, and the deposit after the sale, see <i>infra</i> .
Auctioneer must not exceed his authority.	6. To complete a sale by auction, there must be a bidding on the one side by one as a purchaser, and an acceptance of the bidding by the auctioneer, signified by the fall of his hammer, <i>Payne v. Cave</i> , 3 T. R. 148; and before the hammer is down, the purchaser may retract his bidding, <i>ib.</i> ; but the retraction must be made loud enough to be heard by the auctioneer, otherwise it will be of no avail, <i>Jones v. Nanney</i> , <i>ub. sup.</i>
Biddings at the sale.	The bidding must be by some person capable of being a purchaser, and therefore a bidding by a lunatic or idiot would be void, on the general principle that such person cannot make a valid contract, <i>Yates v. Boen</i> , 2 Str. 1104; and so a bidding by a drunken man, <i>Pitt v. Smith</i> , 3 Campb. 38; and so it is not competent to an auctioneer to make a bidding, unless he acts as duly authorized agent, <i>Coles v. Trecothick</i> , 9 Ves. 248.
Biddings by competent persons.	The courts at one time discountenanced private biddings, holding them to be a fraud upon the purchaser, <i>Bexwell v. Christie</i> , Cowp.
Private biddings how far admis-	

395; and the acts of parliament, which permit a private bidding on behalf of the vendor, were held to be made for the protection of the revenue, and not to interfere with private rights, *Howard v. Castle*, 6 T. R. 642; it seems, however, now to be settled, that a private bidding is admissible when used only to prevent the property from being sold below its real value, *Smith v. Clarke*, 12 Ves. 477; therefore where a person is employed, not for a defensive purpose, but to screw up the price, the sale has been held bad, *ib.* 483; so likewise where more than one person is employed, *Wheeler v. Collier*, 1 Mood. & M. 123; *R. v. Marsh*, 3 Y. & J. 331; so likewise where, in the conditions of sale, it is stated that the estate is to be sold "without reserve," *Meadows v. Tanner*, 3 Madd. 34. To obviate all questions, the vendor ought to give notice in the conditions of sale, that the owner may bid once in the course of the sale.

Auctions.
sible, or otherwise.

7. After the completion of the sale, it is usual to require a sum to be paid down by way of deposit; and this payment will be deemed to be in part of purchase money, and not as a pledge, *Pordage v. Cole*, 1 Saund. 320; but it will not be deemed in equity to be sufficient part performance of a contract so as to take the cause out of the Statute of Frauds, *Main v. Melbourne*, 4 Ves. 720.

Deposit part of purchase money.

If by the conditions of sale the deposit is made payable to the auctioneer or solicitor, the payment ought to be immediately required, *Hanson v. Roberdeau*, 1 Peake, 120. The auctioneer, in receiving the deposit, is deemed a mere stakeholder, and not an agent, as in the case of the sale; and he cannot legally part with it until the sale is completed, and it appears to whom it properly belongs, *Burrough v. Skinner*, 5 Burr. 2639; and he will be answerable to the purchaser for the deposit, though he may have paid it over to the vendor, *Edwards v. Holding*, 5 Taunt. 815; *S. C.* 1 Marsh. 377; but if he retain the money, he is not liable to pay interest for it, *Lee v. Munn*, 8 Taunt. 45; *S. C.* 1 Moore, 481; although he place the money in the funds, and make interest of it; *Harrington v. Hoggart*, 1 B. & Ad. 577; and it makes no difference that the vendor desires the money to be put out to interest, if the purchaser does not join in the request, *ib.*

Payment of deposit to auctioneer.

Where there is an adverse claim, the auctioneer may either file an interpleader bill, *Farebrother v. Prattent*, 5 Price, 303; *S. C.* 1 Dan. 64; *Annesley v. Muggridge*, 1 Mad. 593; or he may seek relief under the Interpleader Act, 1 & 2 Will. 4, c. 58, *Allen v. Gilby*, 3 D. P. C. 113; but he cannot file a bill of interpleader, if he insist on retaining out of the deposit either his commission or the auction duty; for interpleader is, where the plaintiff is wholly indifferent between the parties, and the right to which will be fully settled by interpleader between the defendants, *Mitchell v. Hayne*, 2 Sim. & Stu. 63; if, however, upon a bill filed for an injunction the court

Interpleader bill by auctioneer.

Relief under the Interpleader Act.

Auctions.

order the deposit to be paid into court, it will, it seems, deduct the charges of the auctioneer, *Annesley v. Muggridge*, 1 Madd. 393; yet without prejudice to any question as to so much of the deposit as is retained, *Yates v. Farebrother*, 4 Madd. 289; and under the Interpleader Act, an auctioneer paying the deposit into court was held intitled to receive his costs out of the fund so paid in, *Pitchers v. Edney*, 4 Bing. N. C. 720.

Effect of auctioneer's insolvency.

Investment of the deposit.

Where a vendor resists the application of the purchaser that the deposit in the auctioneer's hands shall be paid into court, he shall be charged with the loss occasioned by the auctioneer's failure, *Fenton v. Browne*, 14 Ves. 144; and where the deposit, pending any suit for specific performance, is invested by order of the court, it will be deemed part of the purchase money, and the vendor must abide by the rise or fall of the funds, *Poole v. Rudd*, 3 B. C. C. 49. So where the purchaser invested the deposit, and giving notice to the vendor, the latter returned no answer, it was held that the advantage of a rise and the loss by a fall of the stock belonged to the purchaser, *Roberts v. Massey*, 13 Ves. 561.

Purchaser entitled to interest on deposit.

Where the deposit has been paid to the vendor, and he fails to complete his contract, he is answerable to the purchaser not only for the deposit, but also for interest thereon, *De Bernales v. Wood*, 3 Campb. 258; *Maberly v. Robins*, 5 Taunt. 625; *S. C.* 1 Marsh. 258; and the purchaser is entitled to interest from the time the purchase should have been completed, *Farquhar v. Farley*, 7 Taunt. 592; *S. C.* 1 Moore, 323; recognized in *Harrington v. Hoggart*, *ub. sup.*; and the case is the same if the money is paid to an agent for the vendor, *Duke of Norfolk v. Worthy*, 1 Campb. 337; but the plaintiff's remedy for the return of the deposit is at law, and a court of equity will not give relief in such cases, *Sainsbury v. Jones*, 2 Beav. 462; yet where, after a bankrupt's estate has been sold and the purchaser has paid a deposit, the fiat is superseded, the court will order the return of the deposit, without compelling him to file a bill, *Ex parte Fector*, 1 Buck. 428; and in some cases a purchaser has been held not entitled to a return of the deposit, as where a bill for specific performance filed by a purchaser has been dismissed, the court will not order the deposit to be returned, as that would be decreeing relief, *Bennet College v. Carey*, 2 B. C. C. 390. So where there is an implied agreement between the seller and the buyer, that, if the former will annul the contract, the latter will not compel a return of the deposit, it appears that the purchaser cannot afterwards bring an action for the recovery of the deposit, *Clark v. Upton*, 3 Man. & Ry. 89; and see *Horford v. Wilson*, 1 Taunt. 12. In *Saville v. Saville*, 1 P. Wms. 745, it was said, that if a purchaser submitted to forfeit his deposit, a court of equity would not compel him to complete the contract; but the reporter adds, that it was not the general law of

Deposit not returnable.

Forfeiture of deposit.

the court at that time; and it seems that a purchaser cannot elect to put an end to the agreement by forfeiting the deposit, 1 Sugd. V. & P. 80, 10th ed. citing 2 Mer. 506; see further as to forfeiture, *post*, CONDITIONS OF SALE.

Auctions.

8. On the general principle of the auctioneer being an agent, he is bound to take as much care of the goods intrusted to him as he would take of his own; and if loss or damage arises to it through his default, he will be liable to the owner for it, *Maltby v. Christie*, 1 Esp. 340; *sed secus* if it be purely accidental, *ib.*

Auctioneer's liability as to charge of goods.

An auctioneer is in general not responsible for the purchase money, unless he has received it; but if he sell on credit, without the express order of his principal, he is then liable to the latter for the purchase money, *Williams v. Millington*, 1 H. Bl. 81. When he has received the purchase money, it is his duty to pay over the same to his employer immediately; and this he may do, although the latter is to his knowledge in insolvent circumstances, *White v. Bartlett*, 9 Bing. 378; *S. C.* 2 M. & Sc. 515; so where the owner of goods, sold by an auctioneer, had committed an act of bankruptcy before the sale, but without the knowledge of the auctioneer, held, that payment by the latter of the proceeds to the owner was protected by the Bankrupt Acts, *Coles v. Robins*, 3 Camp. 183; but he will be liable to the real owner of goods, if, after a written notice that they did not belong to his employer, he persists in the selling them, *Hardacre v. Stewart*, 5 Esp. 103; so where he sold the goods of B. as the goods of A., and suffered the buyer to pay A., he could not afterwards maintain an action for the price, *Coppin v. Walker*, 7 Taunt. 237; *S. C.* 2 Marsh. 497; and if after a sale he rescinds the contract with the buyer, without the express consent of the owner, he will be liable to him in an action of assumpsit for the proceeds of the sale, *Nelson v. Aldridge*, 2 Stark. 435; and where he sold goods wrongfully under a *fi. fa.*, without being expressly retained by the sheriff, held, that he could not maintain an action against the latter for any breach of an implied contract of indemnity, *Farebrother v. Ansley*, 1 Camp. 343.

Proceeds of sale.

9. An auctioneer, like every other agent, is entitled to remuneration, but the extent of the remuneration is a matter of stipulation; for where there is no contract, and no usage of trade, there will be no commission, *Taylor v. Brewer*, 1 M. & S. 290; and he has a lien for his commission and expenses as well as for the auction duty, not only upon goods in specie, but also upon the proceeds, *Drinkwater v. Goodwin*, Cowp. 251; but he may forfeit his right to all remuneration, if, by his negligence or unskilfulness, no benefit accrue to his employer from the service performed, *Capp v. Topham*, 6 East, 392; or if he so act as to deprive himself of his remedy against the parties, as if he sells goods belonging to both A. and B., as the goods

Remuneration of auctioneer.

Auctions.

Validity of the contract.

Particulars and conditions of sale.

Biddings at the sale.

Provisions of the Statute of Frauds.

Contracts in writing.

Contract entire or otherwise.

of A. only, and suffers the buyer to settle with A. for them, without giving him notice that he had any claim on them, he cannot recover the proceeds from the buyer, *Coppin v. Walker*, 7 Taunt. 243; *S. C.* 2 Marsh. 497.

10. The validity of the contract for a sale by auction depends upon many circumstances: First, as to the particulars of sale, whether they are correct or otherwise, see *post*, PARTICULARS OF SALE; and as to the conditions of sale, whether they have been complied with or otherwise, see *post*, CONDITIONS OF SALE.

Secondly, whether the sale has been properly conducted as to the biddings. The employment of puffers will vitiate the sale.

Thirdly, whether the provisions of the Statute of Frauds have been complied with. In the first place, contracts for sale by auction must, to be valid, be in writing; but it seems to be now settled that an auctioneer, being an agent lawfully authorized by both parties to sign a contract for them, his writing down the name of the purchaser on the sale bill opposite to the lot purchased, is a note or memorandum in writing sufficient to satisfy the intent of the statute, *Emmerson v. Heelis*, 2 Taunt. 38; and so the signature of the auctioneer on the sale of goods has been held to be within the 17th section of the same statute, *Hinde v. Whitehouse*, 7 East, 558.

In the next place, it has been a question, whether on sales by auction the contract is to be considered as entire or separate; and this seems to have depended upon whether the enjoyment of the whole was essential to the enjoyment of any part. Where, therefore, a man purchased two lots at an auction, to one of which only a title could be made, this was held to be an entire contract, and that the purchaser might rescind the same, *Chambers v. Griffith*, 1 Esp. 150; *S. P. Gibson v. Spurrier*, Peake's Add. Cas. 49; *sed secus* where the lots are not so complicated with each other as to render those to which there is no title necessary to the enjoyment of the rest, *Poole v. Shirgoold*, 2 B. C. C. 118; *S. C.* 1 Cox, 273; but in the case of a sale of goods by auction, the contracts for different lots at different sums have been held separate both at law and in fact, *James v. Shore*, 1 Stark. 426, "a complete bargain being made as to each article as soon as the auctioneer has signed his name to it," per Best, J., *Baldehy v. Parker*, 2 B. & C. 37; *S. C.* 3 D. & Ry. 220; therefore, where several lots are knocked down to the same bidder, each of which is under 10*l.*, although the aggregate is above that sum, yet the statute in such case does not apply, and neither writing or delivery is necessary, *Emmerson v. Heelis*, *ub. sup.*; and on the same ground it has been decided, that where each of several lots sold is under 20*l.*, no stamp was necessary upon the agreement for each lot, *Roots v. Lord Dormer*, 4 B. & Ad. 77; *S. C.* 1 Nev. & Man. 667. As to the case of a sale by private contract, the current of opinion is to consider the

contract entire, on the principle that the having the whole of the lots may be an inducement to purchase at all, *Baldey v. Parker*, recognizing, *Champion v. Short*, 1 Campb. 52.

Auctions.

Conditions of Sale by Auction, see post, CONDITIONS OF SALE.

No. CLXXX.

Notice of appointing a Person to bid for the Owner and his Acceptance of the Appointment.

No. CLXXX.

*Notice
(appointing
a Bidder).*

Take notice that (*intended bidder*) is appointed by (*owner*) the real owner of the estate goods or effects intended to be by you put up to sale by way of auction on the day of to bid at the sale for the use and behoof of the said (*O.*)

And take notice also that the said C. D. has agreed accordingly to bid at the said sale for the use and behoof of the said E. F.

Witness their hands this day of 184

(*owner*)

Witness A. B.

(*bidder*)

To Mr. Auctioneer.

No. CLXXXI.

Notice that a Steward or Agent intends to bid for the Owner.

No. CLXXXI.

*Bidding by
Steward, &c.*

Take notice that (*steward*) the steward or known agent of (*owner*) of &c. owner of the estate &c. intended &c. (*see above*) [the said (*S.*) being actually employed in the management of the sale of such estate &c.] is about to bid at the said sale for the said (*O.*) As witness the hand (*a*) of the said (*S.*) the day of

(*steward.*)

To Mr. Auctioneer.

(*a*) In this case it is sufficient if the notice is signed by the steward or agent only; but see the form following.

No. CLXXXII.

Notice
(appointing
Bidder by
Steward).

No. CLXXXII.

Notice of appointing by a Steward or Agent a person to bid for the Owner.

Take notice that (*intended bidder*) is appointed by (*S.*) the steward or known agent of (*owner*) the owner of the estate &c. intended &c. [the said (*S.*) being actually employed in the management of the sale of such estate &c.] to bid at the said sale for the use and behoof of the said (*O.*)

And take notice also that the said (*I. B.*) hath agreed and doth intend accordingly to bid at the said sale for the use of the said (*O.*) As witness the hands of the said (*S.*) and (*I. B.*) the day of

(*steward.*)(*intended bidder.*)

Witness A. B.

To Mr. Auctioneer.

PARTICULARS OF SALE.

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. <i>Description of Property.</i> 2. <i>Description must be accurate.</i> 3. <i>Description must be clear.</i> 4. <i>Construction of the Particulars.</i>
<i>Trifling Variation not material.</i>
<i>Particular Words.</i>
<i>"More or less."</i> | <p>"Clear yearly Rent."
Extent of the Acre.</p> <ol style="list-style-type: none"> 5. <i>What deemed to be Misdescription.</i> 6. <i>Effect of Misdescription.</i>
<i>If fraudulent, will vitiate Sale, but not if unintentional.</i>
<i>Compensation.</i> |
|---|--|

Description of
property.

SECT. 1. Particulars of sale are a description of the things to be sold, which may be merely a verbal statement or in writing, or there may be a plan annexed by way of explanation. It is commonly the business of the auctioneer to draw up such particulars, but considering the importance of accuracy in a document of this kind, it seems advisable, where the property is of magnitude, and the title not perfectly clear, that the matter should not be left exclusively in his hands.

Description
must be accu-
rate.

2. A vendor must not only be careful to guard against misdescription, but his description must be accurate; for "if a person, however unconservant in the actual situation of his estate, will give a description, he must be bound by that, whether consonant of it or not;" per Lord Thurlow, C., *Calverley v. Williams*, 1 Ves. jun.; and verbal declarations by the auctioneer, by way of explanation at the

time of the sale, will not be admitted, *Gunnis v. Erhart*, 1 H. Bl. 289; *Bradshaw v. Bennet*, 5 C. & P. 48; and this rule prevails in equity as at law, *Jenkinson v. Pepys*, cited 6 Ves. 330; and extends to the seller as well as to the purchaser, *Higginson v. Clowes*, 15 Ves. 515. So where the particulars of sale described the estate as held for three lives, and one dropped before the sale, and the auctioneer stated the fact, held that evidence of his statement could not be received, and that the auctioneer ought to have altered the particulars, *Bradshaw v. Bennett*, *ub. sup.*

Particulars of
Sale.

3. Particulars and plans should be so framed as to convey clear information to the ordinary class of persons, who frequent sales by auction; therefore, where the particulars stated that a lot was to be subject to the same rights of way over the same as were then enjoyed under the existing leases of certain houses, and a plan which was referred to disclosed one way but not another over the lot, which was also then existing,—held, that the contract was not binding on the purchaser, *Dykes v. Blake*, 4 Bing. N. C. 463; 6 Scott, 320; *S. C.* 1 Arn. 209; and the reading of a lease at the time of the sale will not excuse any misdescription, *Jones v. Edney*, 3 Campb. 284. So where an original lease contained a power of re-entry if certain trades were carried on, and the lessee granted underleases which contained no such stipulation, and upon a sale by an assignee of the lessee it was stated that the covenant in the original lease would be inserted in underleases to be granted to the purchasers, but did not state whether the covenant was inserted in the underleases already granted,—held, that the purchaser might recover his deposit on account of such omission, as none but a very careful person would have suspected that in underleases already granted that covenant had not been inserted, *Waring v. Hoggart*, 1 Ry. & Mood. 39. So in equity specific performance will not be decreed against a purchaser at an auction where the particulars of sale were so vague and indefinite that a purchaser could not know what he was contracting for, and might be easily misled, *Steward v. Alliston*, 1 Mer. 26; *Trower v. Newcome*, 3 Mer. 704.

Description
must be clear.

4. A particular writing for the purchase of an estate, is not a writing within the Statute of Frauds, and therefore unless the party purchased by it, or it was shown him at the time of the purchase, held that he could not compel a specific performance if it contained more than the words of the conveyance would in strictness carry, *Cass v. Waterhouse*, Prec. Chanc. 29.

Construction of
the particulars.

A trifling variation in the description of an estate sold by auction, is not material if the transaction be fair, *Calcraft v. Roebuck*, 1 Ves. jun. 221; and a purchaser will not be entitled to claim a part of an estate which, though answering to the general description in the advertisement, was not included in a more particular description, *Calverley v. Williams*, 1 Ves. jun. 210.

Trifling varia-
tion not mate-
rial.

Particulars of Sale.	As a rule, the words usually employed in describing the quantity "containing by estimation acres, more or less," import that the precise quantity is not warranted; and where there is considerably less than was stated, the purchaser will be entitled to an abatement, <i>Hill v. Buckley</i> , 17 Ves. 394; and see <i>Portman v. Mill</i> , 2 Russ. 571.
Particular words, "more or less."	
"Clear yearly rent."	By the words "clear yearly rent," is to be understood clear of all outgoing, incumbrances, and other extraordinary charges, not such as are according to the custom of the country, as tithes, poor rates, church rates, &c. which are usual charges on the tenant.
Extent of the acre.	Formerly acres were either customary, that is according to the measure of the country, or they were by statute; and although for the most part lands were sold according to the latter measure, <i>Wing v. Earle</i> , Cro. El. 267; <i>Morgan v. Tedcastle</i> , Poph. 55; yet where a man agreed to convey a certain number of acres of land which were known by estimations, there the acres were taken according to the estimation of the country where the land lay, <i>Some v. Taylor</i> , Cro. El. 665; but now by 5 & 6 Will. 4, c. 63, all customary measures are abolished.
What deemed a misdescription.	5. There may be a misdescription in the particulars, either by stating things differently from what they really are, or by omitting to state what ought to be known; as stating the property to be one mile from a borough town, which proved to be four miles, <i>Norfolk (Duke) v. Wortley</i> , 1 Campb. 337; or describing a public-house as "a free house," when by a covenant in the lease it appeared that the lessee was obliged to take his beer from a particular brewer, <i>Jones v. Edney</i> , 3 Campb. 285; or stating in general terms that there was a covenant in the lease against carrying on any offensive trade, instead of enumerating the particular trades contained in the covenant, <i>Flight v. Booth</i> , 1 Bing. N. C. 370; <i>S. C.</i> 1 Scott, 170; or omitting to state verbally, or to show by a plan a particular right of way over a particular lot, <i>Dykes v. Blake</i> , <i>ub. sup.</i> ; or omitting to mention that notice had been given by the landlord of his intention to enter unless the premises were put in repair, <i>Stevens v. Adamson</i> , 2 Stark. 422; or omitting to state that a house, which formed part of the premises demised by a lease, had been pulled down before the sale, <i>Granger v. Worms</i> , 4 Campb. 83; or stating that the goods to be sold belonged to one man, when in fact they belong to another, <i>Coppin v. Walker</i> , 7 Taunt. 237; <i>Coppin v. Craig</i> , <i>ib.</i> 243.
Effect of misdescription, if fraudulent, will vitiate the sale,	6. An error in the description of the property to be sold by auction may be such as either to vacate the contract altogether, or to make it a subject for compensation. A misdescription wilfully introduced into the particulars, whether material or not, will vitiate the sale, <i>Norfolk (Duke) v. Wortley</i> , <i>ub. sup.</i> ; for if particulars of sale by auction are calculated to entrap persons, the sale is void, <i>Robinson v. Musgrove</i> , 8 C. & P. 469; but if the error be unintentional, and there is, as is
but not if unintentional.	

usually the case in conditions of sale, a stipulation providing against such errors, it will at law be cured by the conditions, *Leach v. Mullett*, 3 C. & P. 115; but "equity will enforce a sale with a compensation for a slight unintentional misdescription, although there is no such condition, and will not assist the seller, where there is such a condition, if the misdescription be an important one," 1 Sugd. V. & P. 51, 10th ed., citing *Stewart v. Allerton*, 1 Mer. 26; *Powell v. Double*, MS. V. C. 15 June, 1832.

Particulars of Sale.

Compensation.

No. CLXXXIII.

Particulars of Sale by Auction (a) of a Freehold Estate (b).

The several freehold pieces or parcels of land or ground situate at _____ in the county of _____ acres (c) containing by estimation _____ acres more or less called or known by the several names of (*here set out the particulars*) and now in the occupation of (*specify the several tenants, if more than one, to each piece of land.*)

No.
CLXXXIII.
Particulars of Sale.
Freehold.

(a) In the advertisements of sales by auction, it should be stated that the estate will be sold by auction at the place and time fixed, "unless previously sold by private contract, in which case notice of the sale will be immediately given to the public."

If the particulars describe the property as "free from all incumbrances," it will be deemed a misdescription, and will vitiate the sale, if it appears afterward that there is an annuity charged upon it, be it ever so small, *Gunnis v. Erhart*, *ub. sup.* sect. 45.

If therefore the property be charged with an annuity, say,

"This property is subject to a yearly sum of £ _____ issuing out of the same, and payable to (*annuitant*) who is now in the _____ year of his age, during the term of his natural life."

(b) If it be a remainder or reversion, say,

"The remainder or reversion of (*reversioner*) expectant upon and to take effect in possession immediately after the decease of (*tenant for life*) of and in all, &c."

If it be an advowson, say,

"The advowson, donation, or perpetual right of patronage and presentation of, in and to the rectory or parish and parish church of _____ in the county of _____ (and all glebe lands, &c." *if any appurtenant to the advowson.*)

If it be a rent-charge, say,

"The yearly rent-charge or annual sum of £ _____ issuing out of and chargeable upon all the lands, &c. situate at _____ in the county of _____ and payable to the said (*vendor*) for and during the term of his natural life, under, &c."

(c) The acres were formerly distinguished as they were statute or customary which, since the 5 & 6 Will. 4, c. 63, is unnecessary, see *supra*, sect. 4.

No.
CLXXXIII.
*Particulars of
Sale,
Freehold.*

This property is subject to a certain mortgage in fee (or "for term of years") for securing the principal sum of £ and interest (or "this estate is subject to tithes," or "tithe-free," as the case may be).

No.
CLXXXIV.
Leasehold.

No. CLXXXIV.

Particulars of Sale of a Leasehold Estate (a).

A messuage or tenement with the yard garden and outbuildings &c. situate &c. and now in the occupation of

The premises are held for the residue of a term of years subject to a rent of £ and under the common usual covenants (b).

AWARDS.

No. CLXXXV.
*Award by a
Commissioner
under an
Inclosure Act.*

No. CLXXXV.

Award by a Commissioner under an Inclosure Act.

Obs. As to the nature of Awards, and for other precedents, see *ante*, ARBITRATION.

Recital.
Act of parliament.

To all &c. I (Commissioner) of &c. send greeting Whereas by a certain act of parliament made and passed in the reign of her present Majesty intituled An Act for inclosing Lands within the Manor of M. in the Parish of F. and County of N. Reciting among other things that there were within the said manor of M. open common fields commonable lands commons and waste grounds Also reciting that I. P. Esquire was lord of the said manor and as such was entitled to the soil of the commons and waste grounds Also reciting that the Right Honorable Lord K., W. T. Esquire

(a) As to the effect of misdescription of leasehold estates, see *ante*, PARTICULARS OF SALE, Pref. sect. 5.

(b) A covenant in a lease to pay the land tax and sewer rate has been held to be a common and usual covenant, and that the purchaser of a lease containing such a covenant was not at liberty to rescind the contract on the ground of misdescription, *Bennett v. Womack*, 7 B. & C. 627; S. C. 1 Man. & Ry. 644; and the same rule prevails in equity, *Barraud v. Archer*, 2 Sim. 433; S. C. 2 Russ. & My. 751. As to the omission of unusual covenants, see *supra*, sect. 5, 6.

and others were owners and proprietors of divers inclosed lands tenements and hereditaments within the said manor and in respect thereof were entitled to rights of common of pasture and other rights in over and upon the said open common fields commonable lands and waste grounds *Also reciting* that an act commonly called the General Inclosure Act was passed &c. *And* after further reciting that the said common fields commonable lands and waste grounds were in their present state incapable of any considerable improvement but if the same were divided and allotted unto and amongst the several persons interested therein according to their respective interests and such allotments were inclosed the same might be greatly improved It is amongst other things enacted That I the said (C.) should be and I was thereby appointed commissioner for dividing allotting and inclosing the said open common fields commonable lands commons and waste grounds and putting the now reciting act into execution subject to the rules orders and directions thereafter mentioned and with such directions and stipulations as are contained in the said therein recited general act which shall be applied deemed and taken as part of the now reciting act except in such cases only as the same were thereby varied and altered *And that* (Surveyor) of &c. should be and was thereby appointed surveyor for the purposes of the now reciting and the said General Inclosure Acts *And that* I the said (C.) should and might scour out deepen widen and repair all such ancient ditches &c. And also make or cause to be made such new ditches &c. in through over and across the said open common fields &c. within the said manor of M. with the previous consent of the proprietors of such inclosures or other lands not thereby directed to be divided and inclosed of such dimensions and in such places as I the said (C.) should think fit *And that* I the said (C.) am thereby directed and required by any writing under my hand or in and by my said award to order and determine by whom and at whose expense at what time or times and in what manner the said ditches &c. should be made &c. *And that* for providing for and defraying the costs charges and expenses of obtaining passing and executing the now reciting act and the said general act I the said (C.) am thereby required as soon as conveniently might be after the passing of the now reciting act to sell and dispose of in manner as in the said acts directed such parcel or parcels of the said commons and waste grounds as I should judge most proper and expedient *And that* I the said (C.) should and I am thereby

No. CLXXXV.

*Award by a
Commissioner
under an
Inclosure Act.*

Appointment of
commissioner
under the act.

Appointment of
a surveyor.

Powers, &c. of
commissioner to
award the ex-
penses.

To sell part of
the land for
defraying ex-
penses.

To set out por-
tions of land for
gravel pits.

No. CLXXXV.

*Award by a
Commissioner
under an
Inclosure Act.*

To make allot-
ments to the
lord ;

to the rector ;

to commoners.

To make ex-
changes.

required to set out allot and award unto and for the surveyors of the highways of the parish aforesaid for the time being one or more plots of the said commons and waste grounds as I should think proper as and for public stone and gravel pits with convenient roads to and from the same and which plot or plots of land so to be set out as aforesaid should be used in common by the surveyors of the highways of the said parish and by the respective proprietors of lands and estates within the said manor and by their tenants for their own private uses and for the repairs of the public and private roads including the roads to be set out in pursuance of the said reciting act and the said General Inclosure Act *And* that I the said (C.) am authorized to set out allot and award to the lord of the said manor one sixteenth part of the said commons and not to exclude any allotment or allotments which would otherwise be made to him in satisfaction of or for any common of pasture upon or over the said commons and waste grounds by this act directed to be divided and inclosed in respect of any lands or tenements belonging to any such lord *And* in the next place that I the said &c. should set out &c. unto the said (*rector*) one tenth part of the residue of the said commons &c. in lieu of and in recompence for the tithes of the said commons &c. *And* that I the said &c. should afterwards set out and allot the residue and remainder of all the said commons and waste grounds thereby directed to be divided and inclosed unto and amongst all and every person and persons body and bodies politic and corporations collegiate having any right or rights of common or other rights or interests in over or upon the same or any part thereof in such parts and shares and in such manner as I the said (C.) should think fit and should adjudge and determine to be proportionate to the value of his her or their respective rights or interests in over and upon the said commons and waste grounds. *And also* that it should be lawful for me the said (C.) to set out and allot and award any lands tenements or hereditaments within the said manor in lieu of or in exchange for any other lands tenements and hereditaments in the said manor parish hamlet or place *Provided* that all such exchanges be ascertained specified and declared in and by the award of me the said (C.) and made with the consent of the owner or owners of the lands tenements or hereditaments which should be so exchanged such consent to be testified as therein mentioned *And* that all and every such exchanges so to be made should be valid and effectual in law to all intents and

purposes whatsoever *And whereas* by the general act it is amongst other things enacted That no person should be capable of acting as a commissioner in the execution of any of the powers to be given by any act thereafter to be passed for dividing or allotting or inclosing any lands or grounds except the power of giving notice of the first meeting and administering the oath thereinafter directed until he (or they) should have taken such oath which oath it should be lawful for any one of the justices of the peace for the said county within which the said lands or grounds should be situated to administer And that the said oath should be annexed to and enrolled with the said award *And* that such commissioner in the first place before he proceeded to make any of the divisions or allotments directed to be made by the said act or any such act should set out and appoint the public carriage roads and highways through and upon the lands and grounds intended to be divided allotted and inclosed and to divert turn and stop up any of the roads and tracks upon and over any of the lands and grounds as he should judge necessary subject nevertheless to such examination of the said roads and highways as is required by the said act or acts and that the said commissioner should thereby be empowered and required to set out and apart such private roads bridleways footways ditches drains watercourses watering places quarries bridges gates &c. in over upon and through or by the sides of the allotments to be made and set out in pursuance of such act as he should think requisite giving such notice and subject to such examination as in the same acts is required And that the same should for ever thereafter be supported and kept in repair by and at the expense of the owners and proprietors for the time being of the lands and grounds directed to be divided and inclosed in such shares and proportions as the commissioner or commissioners should in and by his or their award order and direct *And whereas* by the said General Inclosure Act it is amongst other things further enacted That as soon as convenient might be after the division and allotment of the said lands and grounds should be finished pursuant to the purport and directions thereof or of any such act the said commissioner or commissioners should form draw up or cause to be formed and drawn up an award in writing which should express the quantity of acres and roods contained in the said lands and grounds and the quantity of each and every part thereof which should be allotted assigned and exchanged and the situations and descriptions of the same

No. CLXXXV.

*Award by a
Commissioner
under an
Inclosure Act.*

Oath required
by the General
Inclosure Act.

Roads to be set
out.

To make an
award in
writing.

No. CLXXXV.

*Award by a
Commissioner
under an
Inclosure Act.*

respectively and should also contain a description of the roads ways footpaths watercourses &c. set out and appointed by the said commissioner or commissioners respectively as aforesaid and all such other rules orders agreements regulations directions and determinations as the said commissioner or commissioners should think necessary proper or beneficial to the parties which said award should be fairly engrossed or written on parchment and should be read and executed by the said commissioner or commissioners in the presence of the proprietors who might be present at a general special meeting called for that purpose conformably to such notice as therein is prescribed *And also* that he or they the said commissioner or commissioners if he or they should think it necessary should form or draw or cause to be formed or drawn on parchment or vellum such maps or plans of the lands or grounds the better to describe the several new allotments or divisions and premises that should be exchanged and express the same quantity in each allotment to the respective proprietors which said maps and plans should be annexed to and enrolled with the said award *And whereas* I the said (C.) named in the first herein recited act did cause due notices to be given of the time and place of my first and every other meeting for the execution of the said acts but before I entered upon the execution of any of the powers and authorities given to and invested in me in and by the said in part recited acts of parliament [except as before mentioned] I did on the day of in the year of at in the said county take and subscribe before one of her Majesty's justices of the peace acting in the said county the oath by the said General Inclosure Act directed and hereunto annexed *And whereas* I the said (C.) at my first and subsequent meetings in pursuance and exercise of the power and authority given to and vested in me by the said recited acts and each of them did receive the claims of the proprietors and other persons interested in the said common fields commonable lands commons and waste grounds by the said first herein recited act directed to be enclosed and such rights or claims as were objected to I did examine into hear and determine the same *And* I the said (C.) having appointed actual surveys and admeasurements of all the open fields commonable lands commons and waste grounds the value and quantity of which it was necessary to ascertain for the purpose of the same acts or either of them and of the maps and plans respectively made drawn and verified by the said (S.) and

Notices given
by a commis-
sioner.

Oath taken.

subscribed before me and hereunto also annexed according to the directions as in the said acts contained And being now well satisfied as to the several and respective limits and boundaries of all the said open common fields commonable lands commons and waste grounds so far as the same were necessary to be ascertained for the purposes of the said acts and having examined into all encroachments [except as in the first herein recited act is excepted] and enclosures suggested to me to have been taken or made from any part of the said lands or grounds thereby directed to be divided and enclosed And having heard and examined the proofs and allegations concerning the same and having duly considered the quantity and quality and situation of all the said open fields commonable lands commons and waste grounds And also the rights shares and interests of the said several proprietors and other persons interested therein respecting which he she or they was or were entitled And having also considered the sales and exchanges of the said lands tenements and hereditaments hereinbefore mentioned and intended to be hereby effectuated with the consent and approbation in writing of the several and respective parties making the same And having duly and well considered as well all the public carriage roads and highways private roads bridleways footways ditches drains watercourses watering places quarries hedges gates stiles mounds fences banks bounds and boundaries and landmarks which I have judged necessary and requisite to be set out and appointed in over upon and through the said open common fields commonable lands common and waste grounds directed to be enclosed as aforesaid as also all and every other the matters circumstances and things referred to my award arbitration judgment and determination in and by the said in part recited acts of parliament or either of them *Now know ye* That I the said (C.) on the day of the date of these presents in pursuance of and by virtue and in exercise of the several powers and authorities to me given and in me vested in and by the same acts of parliament or either of them and of all and every other power and authority in anywise enabling me in this behalf make publish and declare this my final award order and arbitrament and determination touching the premises in manner and form following that is to say That the said open fields commonable lands and waste grounds by the first in part recited act directed to be set out divided and allotted by me as aforesaid do contain in the whole in statute measure according to the said survey delivered by the

No. CLXXXV.

*Award by a
Commissioner
under an
Inclosure Act.*

Award.

No. CLXXXV. said (S.) upon oath as aforesaid [including the carriage roads
Award by a Commissioner under an Inclosure Act. highways bridleways footways and private roads hereinafter de-
scribed] acres &c. And I the said (C.) do hereby set out
and award the following public carriage roads highway and foot
Roads. roads and private roads which I have adjudged and do hereby
adjudge necessary to be hereafter respectively reserved in over
and through the said lands directed to be inclosed as afore-
said and of which public notice hath been given subject to
appeal and examination in manner required by the said General
Inclosure Act that is to say (*here describe the several roads drains
&c. and by whom they are to be maintained and kept up and re-
paired*) And I the said (C.) in pursuance of and in further exe-
cution of the powers and authorities so vested in me by the said
in part recited acts as aforesaid do hereby set out divide and allot
All the residue of the said open fields commonable lands com-
mons and waste grounds into and amongst the respective persons
hereinafter named their several and respective heirs in severalty
in the several and respective allotments pieces and parcels of
lands marked and corresponding with certain numbers in Roman
characters on the said plans hereunto annexed and containing by
the survey and admeasurement thereof by the said surveyor as
aforesaid in statute measure the several and respective quantities
following be the same more or less and also severally and respec-
tively abutted and bounded in the manner hereinafter described
that is to say I have assigned set out and allotted and do here-
by award unto the said (*lord of the manor*) lord of the manor
of &c. (*here describe the manorial allotments*) And I have as-
signed &c. unto the said (*rector*) rector of the said parish &c.
To lord of ma- (*here describe the tithe allotments*) And lastly I have set out
To rector. divided and allotted and do &c. all the residue of &c. to and
To proprietors. amongst the several proprietors &c. in mannér following (*here
describe the several allotments to the owners*) And whereas the
Recital of an following exchange of lands tenements and hereditaments has
exchange. been mutually agreed upon and made between the several and
respective parties hereinafter named that is to say N. P. and
K. L. have mutually agreed to make an exchange of the re-
spective lands next hereinafter described namely of a certain
close or parcel of ground called and containing
acres &c. for a certain close or parcel of ancient enclosed land
situate in containing acres &c. And also one rood
of ground to the east as the same is now staked out or fenced
off from the residue of a certain close or parcel of ancient en-

closed ground called and the said contracting parties have requested me to set out allot and award the same unto them in manner hereinafter mentioned *Now therefore Know ye* That in pursuance of such agreement and request and in order that the said exchange be ascertained specified and declared in this my award I the said (C.) do hereby assign set out allot and award unto and for the said K. L. his heirs and assigns [in lieu of and exchange for the said close called and the said rood of land hereinbefore respectively described] *All that* the said close called with the appurtenances thereto belonging *And* I the said (C.) do hereby assign set out allot and award unto and for the said N. P. his heirs and assigns [in lieu of and exchange for the said last mentioned close] *All that* the same close called and the said rood of land with their respective appurtenances *And* do order and direct that the said N. P. his heirs and assigns shall make and the said K. L. shall maintain and repair a good and sufficient fence and ditch on the west side of the said exchanged rood of land *In witness* whereof I the said (C.) have this day of in the year of set my hand and seal.

No. CLXXXV.

*Award by a
Commissioner
under an
Inclosure Act.*

*Award of ex-
changed
lands.*

(Commissioner.)

BANKRUPTCY.

CONVEYANCE OF BANKRUPT'S LEASEHOLDS.

- | | |
|--|--|
| <p>1. <i>Bankrupt discharged from Rent, &c.</i></p> <p>2. <i>Assignees may reject the Bankrupt's Estate.</i></p> | <p>3. <i>Assignments by Assignees.</i></p> |
|--|--|

SECT. 1. The 49 Geo. 3, c. 121, s. 19, discharges the bankrupt from the payment of rent and performance of the covenants of a lease which has been accepted by the assignees, and if they decline, the bankrupt may, by 6 Geo. 4, c. 16, s. 75, discharge himself by delivering up the lease to the lessor.

*Bankrupt dis-
charged from
rent, &c.*

2. Assignees may abandon that portion of the bankrupt's effects which the law calls a *damnosa hæreditas*, an interest producing nothing

*Assignees may
reject the bank-
rupt's estate.*

*Conveyance of
Bankrupt's
Leaseholds.*

to the bankrupt's estate, *per Lord Kenyon*, in *Bourdillon v. Dalton*, 1 Esp. 233. But if they shall not elect, the Lord Chancellor may, by the 6 Geo. 4, c. 16, s. 76, upon petition, order them to make their election; and in *Ex parte Scott*, 1 Rose, 446, the Lord Chancellor allowed the assignees ten days to consider what would be most beneficial for the creditors. If the assignees do any act manifesting an intention to adopt the property, they will be liable to the covenants in the lease, *Welch v. Myers*, 4 Campb. 368; *Thomas v. Pemberton*, 7 Taunt. 206; *Hanson v. Stevenson*, 1 B. & A. 303.

Assignments by
assignees.

3. Assignees may assign without the consent of the lessor, although the bankrupt is restrained by his covenant from assigning, because they are assigns at law, and not by the act of the party, *Goodbehere v. Bevan*, 3 M. & S. 353. On the same principle, assignees may discharge themselves of their liability, by assigning to another person, although he may be a pauper, or have left the country, *Taylor v. Shum*, 1 B. & P. 21; *Onslow v. Corrie*, 2 Madd. 330. For this reason it has been held, that they cannot require an indemnity from the purchaser, *Wilkins v. Fry*, 1 Mer. 244; *S. C.* 2 Rose, 370.



No.
CLXXXVI.

No. CLXXXVI.

*Letter of
Attorney.*

Letter of Attorney from the Assignees to empower another to receive the Rents of a Bankrupt's Estate.

Know all Men by these Presents That we A. B. of &c. and C. D. of &c. assignees of the estate and effects of E. F. of &c. a bankrupt *Do* hereby make ordain constitute and appoint G. H. of &c. our true and lawful attorney for us and in our names to receive from A. L. and N. D. &c. of aforesaid all such rents and arrears of rent which now are or shall hereafter grow due and payable from them the said A. L., N. D. &c. respectively for the several lands messuages and tenements they are in possession of at aforesaid in the said county of late the estate of the said E. F. or any futurè tenant of the said premises or of any part thereof and upon receipt thereof or of any part thereof for us and in our names sufficient discharges to give for the same but in default of payment thereof the said several lands to enter and to distrain for the said rents and the distresses there found to dispose of according to law as the said G. H. shall think most proper for the recovery thereof they the said A. B. and

C. D. allowing and hereby ratifying and confirming all and whatsoever the said G. H. shall lawfully act and do in and about the premises by virtue of these presents *In witness &c.*

No.
CLXXXVI.
*Letter of
Attorney.*

No. CLXXXVII.

No.
CLXXXVII.
*Letter of
Attorney.*

Letter of Attorney to receive the statutable Allowance of a Bankrupt.

Obs. There must be an affidavit of this letter of attorney.

Know all Men by these Presents That I (*Bankrupt*) of &c. *Have* made &c. and by &c. *Do* make &c. (*Attorney*) of &c. my true &c. for me &c. to ask demand and receive of and from the accountant-general of the Court of Chancery (*or, in country bankruptcies, "of and from the assignees of the estate and effects of me the said (B.)"*) all and every such sum and sums of money as now is or are or which shall hereafter become due and payable to me the said (*B.*) for all or any allowance or allowances I may be entitled to out of the net produce of my said estate or effects as a certificated bankrupt and on payment of the said monies or any of them or any part thereof for me and in my name to sign seal and deliver all and every such good and sufficient receipts and discharges to the said accountant-general (*or, "the said assignee"*) as shall and may be given and generally to do all and every such further acts and deeds for the better executing and discharging the power and authority hereby given as fully and amply to all intents and purposes as I might or could do I hereby ratifying &c. see *last precedent In witness &c.*

BARGAINS AND SALES.

- | | |
|--|---|
| 1. <i>Definition of a Bargain and Sale.</i> | 4. <i>Requisites of a Bargain and Sale.</i> |
| 2. <i>What passes by a Bargain and Sale.</i> | |
| 3. <i>Consideration.</i> | |
| Operative Words. | |
| | Involment. |
| | 5. <i>Operation.</i> |
| | 6. <i>Bargains and Sales of Goods.</i> |

Definition of
a bargain and
sale.

SECT. 1. A Bargain and Sale is defined to be a contract, in consideration of money, passing an estate in lands, tenements, and hereditaments, by deed indented and inrolled, 2 Inst. 672. The conveyance of lands by bargain and sale derives its operation partly from the doctrine of uses at common law, but more particularly from the Statute of Uses, 27 Hen. 8, c. 10, which executes all uses that are raised. As a use is the basis of the deed, no person can make a bargain and sale who is incapable of being seised to a use. A corporation cannot bargain and sell, because no use can be raised on their seisin, 10 Rep. 24; Gilb. Us. 285. The use cannot be limited on a bargain and sale to any but the bargainee, as the effect of the bargain and sale is only to raise a use, and a use cannot be limited to a use, Dy. 155; Poph. 81. The estate of the bargainee, when executed, may be made subject to trusts; but if it be intended that a use should be executed to any other person than the vendee, some other mode of conveyance should be adopted. The conveyance by bargain and sale is now seldom used, except by commissioners or others under an act of parliament, or trustees under a will or otherwise, in which case the bargain and sale is considered as a common law conveyance.

What passes by
a bargain and
sale.

2. By this kind of instrument, any freeholds of inheritance, whether in possession, reversion, or remainder, may be conveyed; so likewise whatsoever is capable of being limited to a use, as advowsons, tithes, commons, rents, profits of courts, &c. But no property can be bargained and sold which is not *in esse*. So if a man convey his lands to another in fee with a right of way over other lands, the right of way does not pass, Cro. Jac. 190; 2 Co. 74; Saund. Us. 74. A man possessed of a term for years cannot bargain and sell it so that it may be executed by the statute; but a man seised of a freehold may bargain and sell it for years, Gilb. Us. 85.

Consideration.

3. To raise a use upon a bargain and sale, there must be some consideration of money, Cro. Eliz. 394; 1 Co. 176; but the smallest consideration, as 5s. or even a penny, is sufficient, Shep. Touchst. 222.

Operative words.

The operative words in a bargain and sale are, "bargain and sell." But any other words, which, upon valuable consideration, would have raised a use of lands, &c. at common law, the same amount to a bargain and sale within the statute, as if a man covenant to stand

seised to the use of another, Cro. Eliz. 161; 2 Inst. 672; 2 Saund. Us. 47.

Bargains and Sales.

4. By the 27 Hen. 8, c. 19, a bargain and sale must be by deed indented, and not by deed poll, nor by print or stamp; and the writing must be upon parchment, 2 Inst. 672; 3 Leon. 16. The deed must likewise be inrolled on parchment only within six lunar months from the date, Dy. 218; 2 Inst. 273, 4; Sheph. Touchst. 223. By the 5 Eliz. c. 26, bargains and sales of lands may be inrolled in the counties palatine; by the 5 Ann. c. 18, within the West Riding of York; and by the 6 Ann. c. 35, sect. 16, within the East Riding of York, and Kingston-upon-Hull. By the 10th Ann. c. 18, sect. 3, a copy of the inrolment of bargains and sales, examined with the inrolment, and signed by the proper officers, and proved upon oath to be a true copy of such inrolment, shall be of the same effect as if the bargain and sale was produced. The Statute of Inrolments extends to bargains and sales of inheritances and freeholds only, and not to bargains and sales for years, which are good without inrolment.

Requisites of a bargain.

Inrolment.

5. A bargain and sale is an innocent conveyance, and operates only on what the grantor may lawfully convey, 2 Saund. Us. 54. It does not work a discontinuance, create a forfeiture, nor destroy contingent remainders. So if tenant in tail bargains and sells land in fee, only an estate of freehold determinable on the death of the tenant passes, Co. Litt. 327; Gilb. Us. Sugd. 217.

Operation.

6. There may be bargains and sales of goods and chattels as well as of lands, but they need none of the formalities prescribed by the statute. But terms for years must, by the Statute of Frauds, be now in writing, Sheph. Touchst. Prest. Ed. 224.

Bargains and sales of goods.

No. CLXXXVIII.

Bargain and Sale of Copyholds by Tenant for Life under a Power in an Inclosure Act.

No.
CLXXXVIII.
Of Copyholds.

Obs. A bargain and sale of copyholds under an act of parliament, empowering a sale, is a sufficient execution of a power without a surrender, 1 Prest. Abst. 202; 2 ib. 259.

This Indenture &c. Between (*Vendor*) of &c. of the first part (*Commissioner*) a commissioner named in and appointed by an act of parliament made &c. of the second part and (*Purchaser*) of &c. of the third part *Whereas* (*Testator*) late of &c. being seised to him and his heirs according to the custom of the manor of in the county of of sundry capital and other customary messuages &c. duly made signed and published as his

Recital of surrender and will.

No.
CLXXXVIII.
Of Copyholds.

Inclosure Act.

last will and testament in writing and bequeathed to the said (V.) and her assigns all his real estate wheresoever situate or being *To Hold* the same during her natural life And from and after her decease He gave the same in manner therein particularly described *And whereas* at the General Court Baron held for the said manor on the day of the said (V.) was admitted tenant to the several messuages of which the said A. B. died seised *To Hold* to her and her assigns during the term of her natural life *And whereas* by an act of parliament passed &c. It was among other things enacted that all costs charges and expenses of soliciting and passing the said act of parliament and surveying the said common fields thereby directed to be allotted and of dividing and allotting the same and of forming and making the roads &c. which should be set out and of preparing and inrolling the said award and all other costs charges and expenses of the said commissioner and of the several persons employed by him in the execution of the said act and not therein otherwise directed should be borne and defrayed by all the owners and other persons in proportion as near as might be to their respective estates and interests *And* that the said shares and proportions of the said costs should be settled and ascertained by the commissioner *And* it was further enacted that it should be lawful for the said several owners and proprietors for the time being of all or any grounds or lands being tenants in tail or for life by indenture or indentures duly sealed and delivered and inrolled in any of her Majesty's Courts of Record at Westminster and with the consent of the commissioner testified in writing under his hand and seal either before or after the making his award to sell such part or parts of any old inclosures belonging to such proprietors respectively or such part or parts of such new allotment or allotments to be assigned to them respectively by virtue of this act as should be sufficient for the purpose of defraying the respective proportions of such costs charges and expenses as aforesaid *And* that the person or persons to whom any such old inclosures or new allotments or any parts thereof should be sold and conveyed and all persons claiming under them should and might have hold possess and enjoy the same quietly and peaceably according to the terms of sale and conveyance thereof without any let or interruption from the person or persons to whom any inclosure or allotment for the time being should belong or be assigned *And further* it was enacted that no such sale or conveyance should be valid and effectual unless the said

No.
CLXXXVIII.
Of Copyholds.

(C.) should ratify his consent thereto by signing and sealing the same as party thereto *And further* that in cases where any of the said lands might be sold in pursuance of the said act as aforesaid it should be lawful to sell them by public auction or private contract *Provided* that in cases of sale by private contract the said (C.) should be satisfied that the price agreed to be given for the same was not less than the actual value thereof according to any estimate made and verified by oath which the said commissioner was empowered to administer *And* it was thereby also directed that when the said (C.) should judge necessary to direct any sale by public auction pursuant to the said act it was not necessary to require any such estimate as was required in cases of sale by private contract *And whereas* the said (V.) hath paid and expended divers sums of money in defraying her proportion of the costs charges and expenses incident to and attending such inclosure and execution of the powers contained in the said act And which several sums amount in the whole to £ *And whereas* a true and correct statement of the several sums so expended by the said (V.) hath been exhibited and laid before the said (C.) who hath examined the same and hath had the several payments duly vouched before him And he the said (C.) hath ascertained and declared that the said sum of £ was a fair and reasonable claim and ought to be allowed And he the said (C.) doth allow the same *And whereas* the said (V.) being desirous of availing herself of the provisions for that purpose contained in the said act hath applied to the said (C.) for his consent to a sale and conveyance of such part and parts of the said allotments assigned to the said (V.) And in consequence of such application he the said (C.) hath directed the allotments pieces and parcels of land hereinbefore mentioned and described and intended hereby to be conveyed to be sold by public auction on day of pursuant to public advertisement and printed conditions and particulars at which sale the said (P.) being the highest bidder was declared to be the purchaser of the said allotment being lot 2 and 3 in the aforesaid particulars of sale at or for the price of £

Sale.

Now &c. in consideration of &c. to the said (V.) by the said (P.) at &c. paid the receipt &c. by the direction and appointment of the said (C.) a commissioner appointed by the said act testified by his being a party to and executing these presents She the said (V.) pursuant to the power and authority in her vested by the said in part recited act *Doth* hereby grant bargain sell and convey unto the said (P.) his heirs and assigns all &c. and

Testatum.

No.
CLXXXVIII.
Of Copyholds.

Habendum.

the reversion &c. and all the estate &c. *To Have and to Hold* the said pieces &c. hereby bargained and sold or intended so to be with the appurtenances unto the said (P.) his heirs and assigns for ever to the use of the said (P.) his heirs and assigns for ever *And* the said (V.) for herself (*Covenant that she has not incumbered and for further assurance, see GRANT.*)

In witness &c.



No.
CLXXXIX.
By Trustees.

No. CLXXXIX.

*Bargain and Sale of Copyholds by Trustees for Sale
under a Will.*

Obs. If a copyholder surrender to the use of his will, and direct trustees to sell, they may do so without being admitted, and the lord shall admit the vendee on the payment of one fine only, 2 Wils. 400.

This Indenture made &c. Between (*Trustees*) trustees of and under the last will and testament of A. I. late of deceased of the first part F. H. and K. I. and A. his wife of the second part and (*Purchaser*) of &c. of the third part *Whereas* A. I. late of deceased widow was in her lifetime and at her decease seised and possessed of or well entitled unto the copyhold messuage or tenement and premises hereinafter described with their appurtenances for an absolute estate of inheritance to her and her heirs according to the custom of the manor of D. in the county of and did duly surrender the same premises as she should by her last will and testament appoint *And whereas* the said A. I. by her last will &c. gave to the said (T.) &c. And among other things directed that the said (T.) and the survivor of them should as soon as conveniently might be after her decease by public sale or private contract sell and dispose of all that her copyhold messuage &c. with the garden and appurtenances thereunto belonging and should stand possessed of the money to be produced by such sale [after deducting the expenses thereof] *In trust* to divide the same between her two daughters the said F. H. widow and relict of the then late P. H. and the said A. I. the then and now wife of the said K. I. their executors administrators and assigns for their respective sole use and benefit exclusively of their husbands And the testatrix did thereby direct that the receipt and receipts of the said (T.) should be a good and sufficient discharge and good and sufficient discharges to the purchaser or purchasers of all or any part of the said copy-

hold messuage or premises *And whereas* the said A. I. departed this life on or about the day of without revoking or altering her said will leaving the said F. H. and A. I. her surviving and the said (T.) proved the said will in the prerogative court of the Archbishop of Canterbury *And whereas* the said (T.) in pursuance of the trust reposed in them by the said in part recited will of the said A. I. deceased and with the privity consent and approbation of the said F. H. and K. I. and A. his wife testified by their being respectively parties to and severally sealing and delivering these presents have contracted and agreed with the said (P.) for the absolute sale unto her of the said copyhold messuage or tenement and premises hereinafter described free from all incumbrances except as hereinafter mentioned at or for the price or sum of £ (a) *Now this Indenture witnesseth* That in pursuance of the said agreement and also in consideration of £ of &c. to the said (T.) as trustees as aforesaid in hand [with the like privity consent and approbation of the said F. H. and K. I. and A. his wife aforesaid testified as aforesaid] well and truly paid by the said (P.) at or before the sealing and delivery hereof the receipt of which said sum they the said (T.) do respectively acknowledge and that the same is in full of the consideration money for the absolute purchase of the said messuage or tenement hereditaments and premises with their appurtenances free from incumbrances except as hereinafter excepted and of and from the same sum of money and every part thereof and all claims and demands in respect thereof they the said (T.) and also the said F. H. and K. I. and A. his wife do and each and every of them doth acquit release exonerate and for ever discharge the said (P.) her heirs executors administrators and assigns and every of them by these presents They the said (T.) in pursuance exercise and execution of the power and trust in them reposed in and by the said in part recited will of the said A. I. deceased and by virtue of all and every other power and authority vested in or given to them *Have* and each of them *Hath* so far as they can or lawfully may according to the custom of the manor bargained and sold and by these presents *Do* and each and every of them *Doth* so far and no further bargain &c. *All that* one copyhold or customary messuage &c. being part and parcel of the copyhold or customary estates of inheritance of the said A. I. deceased and by her so as aforesaid

No.
CLXXXIX.
By Trustees.

(a) The trustees were not admitted as tenants, see *Obs.*

No.
CLXXXIX.
By Trustees.

Covenant from
trustees.

No act to in-
cumber.

directed to be sold and disposed of in and by her last will and testament *To be had and holden* by her the said (*P.*) her heirs and assigns for ever according to the custom of the said manor under and subject to the rent suit and services of right due and accustomed to be paid and performed according to the custom of the said manor *And* the said (*T.*) for themselves severally and respectively and for their several and respective heirs executors and administrators and not the one for the other or others of them or the acts deeds or defaults of the other or others of them but each for himself and herself only and for his and her own proper acts deeds and defaults and of his and her heirs executors and administrators do and each and every of them doth hereby covenant &c. with the said (*P.*) &c. that they the said (*T.*) have not nor hath any or either of them at any time heretofore either together or separately made done executed or knowingly suffered or caused to be made done executed committed or suffered nor been parties or party or privies or privy to any act deed matter or thing whatsoever whereby or by reason or means whereof the said message or tenement and premises hereinbefore bargained and sold or mentioned or intended so to be is are can shall or may be impeached charged incumbered or prejudicially affected in estate right title interest value or otherwise whatsoever *And* the said F. H. for herself her heirs executors and administrators and the said K. I. for himself his heirs executors administrators and assigns and for the said A. his wife and her heirs do and each of them doth hereby covenant promise and agree with and to the said (*P.*) her heirs and assigns That they the said F. H. and K. I. and A. his wife shall and will warrant and for ever defend unto the said (*P.*) her heirs and assigns according to the custom of the said manor the said message or tenement and premises hereby bargained and sold or otherwise conveyed and assured with all and singular the respective rights members privileges and appurtenances thereunto belonging against them the said F. H. and K. I. and A. his wife and their respective heirs and against all and every other person and persons whatsoever lawfully equitably or rightfully claiming or to claim by from through under or in trust for him her them or any or either of them or by from through under or in trust for the said A. I. deceased (*a*) *In witness &c.*

(*a*) As to this clause of warranty, see 3 & 4 Will. 4, c. 27, s. 74. If, instead of a warranty, covenants for title be given, then say, "And the said F. H. for herself &c. and the said K. I. for himself &c. and for the said A. his wife and

No. CXC.

Bargain and Sale of Freehold and Copyhold Hereditaments by Executors under a Will of a Mortgagor, with Release of Dower by the Widow.

No. CXC.

By and to
Executors.

This Indenture made &c. Between (vendors) executors and trustees under the will of (mortgagor) deceased of the first part (executors) executors and trustees of (mortgagee) of the second part (purchaser) of &c. of the third part A. L. widow of the said (mortgagor) of the fourth part (sub-purchaser) of &c. of the fifth part and A. B. of &c. of the sixth part Whereas by indenture bearing date on or about the day of &c. (mortgage by demise of freeholds and copyholds) And whereas &c. (recite death and will of mortgagee, leaving the executors parties of the second part) And whereas &c. (recite probate of will) And whereas the said (mortgagor) being so seised of and entitled to the freeholds aforesaid and being also seised or possessed of the said copyhold hereditaments for an estate of inheritance to him and his heirs according to the custom of the said manor of having duly surrendered the said copyhold hereditaments to the uses of his will by his last will and testament in writing duly executed and attested for the devise of lands bearing date &c. appointed the said (vendors) executors of his said will and directed them as soon as conveniently might be after his decease to sell and dispose of all his lands &c. for the best price that could be obtained for the same either by public auction or private

Recital of
mortgage.Death and will
of mortgagor
and mortgagee.Devise to exe-
cutors in trust
to sell.

her heirs Do and each of them doth covenant &c. (see GRANT) That for and notwithstanding &c. any act &c. by them the said F. H. and K. I. and A. his wife or the said A. I. deceased or any &c. the said (T.) now have in themselves good right full power and lawful authority to bargain and sell the said messuage &c. in manner &c. And also that it shall and may be lawful to and for the said (P.) her heirs and assigns from time to time and at all times hereafter peaceably &c. without any let &c. of from or by the said F. H. and K. I. and A. his wife their heirs or assigns or any or either of them or any person &c. claiming &c. by from under or in trust for them or any or either of them or the said A. I. deceased And that the same premises now are and for ever hereafter shall remain continue and be free and clear and freely &c. by the said F. H. &c. well and sufficiently &c. of from &c. incumbrances made &c. by them the said F. H. and K. I. and A. his wife or the said A. I. deceased or any &c. And further that they the said F. H. and K. I. and A. his wife respectively and their respective heirs and all and every other person &c. having or lawfully or equitably claiming &c. by &c. them or either of them or the said A. I. deceased shall and will &c." [covenant for further assurance, see GRANT].

No. CXC.

*By and to
Executors.*

Contract of sale.

contract as they should think fit *And* the said testator did declare by his last will that the receipts of the said (*executors*) should be sufficient discharges for the purchase monies and that the purchasers should not be obliged to see to the application or be answerable for the misapplication or nonapplication of the same *And whereas* the said (*executors*) in pursuance of the power given to them by the said will have contracted with the said (*purchaser*) for the sale to him of the said freehold and copyhold lands hereinafter mentioned and hereby bargained and sold or intended so to be and the fee simple and inheritance thereof subject to and charged with the said sum of £ in manner aforesaid and also to the payment of an annuity of £ to (*annuitant*) the mother of the said (*mortgagor*) for her life to an apportioned land tax of and to the delivery of three bushels of barley for the annual quit rents of the said copyhold hereditaments and to a fine rent of but free from all other incumbrances whatsoever at or for the price of *And whereas* the principal sum of £ only remains due to the said (*executors of mortgagee*) under and by virtue of the hereinbefore recited indenture all interest in respect thereof having been paid and satisfied up to the day of the date of these presents *And* it hath been agreed that the said sum of £ shall be discharged out of the said purchase money *And* that the said term of years now vested in the said (*trustees of the term*) for securing the payment of the said sum of £ shall be assigned and surrendered in manner hereinafter mentioned *And whereas* the said fine covenanted to be levied by the said (*mortgagor*) and A. his wife in and by the said in part recited indenture was never levied and said A. now the widow and relict of the said (*mortgagor*) hath agreed to join in these presents and release her dower of and in the said freehold &c. lands &c. *Now this Indenture witnesseth* That in pursuance and performance of the said agreement and in consideration of the sum of £ to the said (*executors of mortgagee*) by the said (*sub-purchaser*) immediately before the execution of these presents at the request and by the direction of the said (*executors of mortgagor*) testified by their severally &c. and in full satisfaction and discharge of all money due to them the said (*executors of mortgagee*) as such executors as aforesaid which sum they the said (*executors of mortgagee*) do hereby respectively acknowledge and of and from the same and every part thereof do respectively acquit release and discharge the said

Agreement to
release dower.Testatum as to
the freeholds.

No. CXc.

By and to
Executors.

(*executors of mortgagor*) and each of them and each of their heirs executors administrators and assigns *And also* in consideration of the further sum of £ being the residue of the said sum of £ to the said (*executors of mortgagor*) at the same time paid by the said (*sub-purchaser*) with the privity and consent of the said (*purchaser*) testified &c. as aforesaid the payment and receipt of which said sums of £ and £ making together the said sum of £ and that the same are in full for the absolute purchase of the said lands tenements and hereditaments respectively bargained and sold or intended so to be and the fee simple and inheritance thereof subject and charged as aforesaid but free from all other incumbrances whatsoever they the said (*executors of mortgagor*) do hereby respectively acknowledge and of and from the same do hereby respectively acquit &c. the said (*sub-purchaser*) and the said (*purchaser*) and each of them and each of their heirs &c. *And also* in consideration of the sum of £ to the said (*purchaser*) at the same time paid by the said (*sub-purchaser*) the receipt of which sum of £ he the said (*purchaser*) doth hereby acknowledge and of and from the same and also of and from the said sums of £ and of £ so paid by the said (*sub-purchaser*) as aforesaid doth hereby &c. They the said (*executors of mortgagor*) pursuant to and by force and virtue and in exercise and execution of the power or authority given to and invested in them in and by the said recited will of the said (*mortgagor*) deceased and of every other power and authority in any wise them or either of them enabling in this behalf and at the request and by the direction of the said (*purchaser*) testified &c. *Have* and each of them *Hath* bargained sold aliened released limited and appointed and by these presents *Do* and each of them *Doth* bargain &c. and they the said (*executors of mortgagee*) for the purpose of surrendering and extinguishing the said term of years so vested in them as aforesaid and at the request and by the direction of the said (*executors of mortgagor*) testified &c. *Have* &c. assigned and also surrendered and released and by &c. *Do* &c. *And* the said (*widow*) for the purpose of releasing and extinguishing all her right and title of dower and thirds and other right and interest of her the said (*widow*) of and in the said lands &c. and in consideration of 10s. the receipt &c. *Hath* released &c. *All* right title &c. of in and to *All those* &c. but subject never-

No. CXC.
By and to
Executors.

Habendum.

theless as to the said messuage &c. called H. to the payment to the said (*annuitant*) mother &c. of one annuity or yearly rent charge of £ during her life and to the usual powers and remedies for recovering and enforcing the payment of the same which said annuity or &c. and the remedies &c. were respectively given or limited to the said (*annuitant*) by a certain indenture bearing &c. and purporting to be a settlement made previous to the marriage of D. the elder and M. his wife then M. H. spinster And also subject as to the said lands &c. (*here set out the several incumbrances before mentioned*) And of and in all outhouses &c. And all the estate &c. *To have and to Hold* the said freehold parts of the said lands &c. hereby released or intended so to be and all and singular other the premises hereinbefore described or mentioned and every part or parcel of the same with their and every of their rights members and appurtenances [subject nevertheless as aforesaid] unto the said (*sub-purchaser*) his heirs and assigns for ever *To the Use* of such person or persons for such estate or estates interest or interests upon such trusts and for such ends intents and purposes and with under and subject to such powers and provisoes conditions limitations declarations and agreements as the said (*sub-purchaser*) at any time or times and from time to time by any deed or deeds to be sealed and delivered by him in the presence of two or more credible witnesses and attested by the same witnesses shall direct limit or appoint And in default of such direction &c. And in the meantime and until the same shall take effect and from time to time subject to such uses estates trusts charges and interests as shall have been directed limited or appointed by the said (*sub-purchaser*) *To the Use* of the said (*sub-purchaser*) his heirs and assigns for and during the term of his natural life and from and after the determination of that estate by any means *To the Use* of the said A. B. his heirs and assigns during the natural life of the said (*sub-purchaser*) *Upon Trust* for him his heirs and assigns And from and after the determination of the estate hereby limited in use to the said A. B. his heirs and assigns for the life of the said (*sub-purchaser*) *Then to the Use* of the said (*sub-purchaser*) his heirs and assigns for ever and to for and upon no other use trust intent or purpose whatsoever And this Indenture further witnesseth That in pursuance and further performance of the said recited agreement and for the considerations hereinbefore expressed they the said

Further testimony as to the copyholds.

(*executors*) at the like request and by the like direction of the said (*purchaser*) testified as aforesaid *Have* and each of them *Hath* bargained and sold and *Do* &c. bargain &c. unto the said (*sub-purchaser*) his heirs and assigns *All* such and so many and such part or parts of the said lands &c. as is or are of copyhold or customary tenure and holden of the said manor of and by copy of court roll or otherwise and every part and parcel of the same with their and every of their rights members and appurtenances *And* all the estate &c. (see *post*, GRANTS) *To have* &c. the said lands or parts of lands &c. hereby bargained and sold or intended so to be and all and singular other the premises hereinbefore mentioned and every part and parcel of the same with their and every of their rights members and appurtenances unto and to the use of the said (*sub-purchaser*) his heirs and assigns for ever at the will of the lord (or “lady”) of the said manor according to the custom of the same and by and under the rents suits and services therefore due and of right accustomed to be paid and performed *And* each of them the said (*executors of mortgagor*) so far as respects his own acts and deeds only and not further or otherwise doth separately for himself and for his heirs executors and administrators covenant &c. (*that he hath done no act to incumber*) *And* the said (*purchaser*) for himself &c. and the said (*executors of mortgagee and trustees of term*) each for himself &c. and the said (*widow*) for herself doth covenant &c. (*that they have done no act to incumber*). See GRANTS, *post*.)

No. CXC.
By and to
Executors.

Habendum.

Covenant that
they have done
no act to in-
cumber.

—◆—
No. CXCI.

*Bargain and Sale and Assignment of a Debt and the Securities
for Payment of the same.*

No. CXCI.
Of Debt and
Securities.

This Indenture &c. Between (*trustees*) of &c. trustees of the effects of an insolvent of the first part (*purchaser*) of &c. of the second part and A. B. of &c. and C. D. of &c. trustees in behalf of the said (*P.*) of the third part *Whereas* (*recite the mortgage whereby debt is secured, then the assignment from insolvent to trustees for the benefit of creditors*) *And whereas* the said (*T.*) have contracted with the said (*P.*) for the absolute sale to him of the said debt or sum of £ be

Recitals.

Contract for
purchase of
debt.

No. CXCI.
Of Debt and
Securities.

the amount thereof more or less or disputed or admitted and of all securities for the same at or for the price or sum of £ to be paid by seven annual instalments at the rate of £ per annum yearly and every year until the whole thereof shall be fully paid and satisfied the first payment to be made on the day of now next ensuing Together with interest to become due and payable in respect of the said principal sum of £ and the unpaid part thereof from time to time such interest to be paid at the respective times of the paying of the said respective instalments of the said principal sum of £ to be secured by several bills of exchange to be drawn and accepted as next is hereinafter mentioned and also by a conveyance of the said hereditaments and premises unto the said A. B. and C. D. *Upon the trusts* hereinafter declared *And whereas* in part performance of the said recited contract or agreement the said (P.) hath accepted seven bills of exchange all bearing even date with these presents and drawn by the said (T.) or by one of them on behalf of himself and the others of them as such trustees as aforesaid and made payable to their own order for the several sums and at the respective times following (that is to say) One of the said bills being for the sum of £ and payable on the day of being in satisfaction of the sum of £ part of the purchase money of and all interest due on the whole of the said purchase money up to the said day of One other bill being for the sum of £ and payable on the day of being in satisfaction of the sum of £ other part of the said purchase money and of all interest on the unpaid part thereof up to that time One other of the said bills being for the sum of £ and payable on the day of being in satisfaction of the further sum of £ other part of the said purchase money and of all interest on the unpaid part thereof up to that time One other of the said bills &c. (*here recite in like form three other bills of exchange*) *And* the seventh and last of the said bills being for the further sum of £ and payable on the day of being the residue and in full satisfaction of the said purchase money and of all interest for such residue up to that time *And* which said several bills of exchange have on the day of the date of these presents been delivered and accepted as aforesaid unto the said (T.) as they do hereby respectively acknowledge *Now this Indenture witnesseth* That in

Acceptance of
bills by pur-
chaser.

Dates and times
of payment.

Delivery of bills
to trustees.

Testatum.

consideration of such acceptance and delivery of the said several bills of exchange by the said (P.) as hereinbefore is mentioned and also in consideration of 10s. of &c. to each and every of them the said (T.) paid by the said A. B. and C. D. the receipt &c. They the said (T.) according to their respective rights &c. with the privity and consent of the said (P.) testified &c. *Have* and each of them *Hath* bargained sold aliened and released and also assigned and by &c. *Do* and each of them *Doth* by &c. bargain &c. unto A. B. and C. D. their heirs executors administrators and assigns *All* &c. the plantations &c. and all the estate &c. *To Have and to Hold* all such part and parts of the said plantations &c. and premises hereinbefore described as is or are of freehold tenure with their and every of their appurtenances unto the said A. B. and C. D. their heirs and assigns *To the Use* of the said A. B. and C. D. their heirs and assigns for ever *And to Have and to Hold* all such part and parts of the said plantations &c. as is or are of freehold tenure with their and every of their appurtenances unto the said A. B. and C. D. their heirs &c. *To the Use* of the said A. B. and C. D. their heirs and assigns for ever *And to Have and to Hold* all such and so many and such part or parts of the said plantations, &c. as is or are personal estate or of the nature of personal estate unto the said A. B. and C. D. their executors administrators and assigns from thenceforth absolutely but nevertheless as to all and singular the plantations hereditaments and premises subject to such right and benefit of redemption in equity as the same are now subject or liable to under or by virtue of the proviso or agreement for redemption contained in the said indenture hereinbefore first recited *And this Indenture further witnesseth* That in pursuance of the said agreement and for the considerations aforesaid and of 10s. to each and every of them the said several persons parties hereto of the first part also at the same time paid by the said A. B. and C. D. the receipt &c. They the said (T.) *Have* and each and every of them *Hath* bargained sold assigned transferred and set over *And* &c. by &c. *Doth* bargain &c. unto the said A. B. and C. D. their executors administrators and assigns *All that* the said debt or sum of £ be the amount thereof more or less and all bonds covenants agreements and other securities given and entered into by the said (*insolvent*) for payment of the same and the full benefit and advantage thereof *And all* the right &c. of the said several persons parties hereto of the first part *To Have Hold* receive take and enjoy

No. CXCI.
*Of Debt and
Securities.*

Habendum.

Further tes-
tatum.
Assignment of
debt.

Habendum.

No. CXCI.
Of Debt and
Securities.

Power of at-
torney.

Declaration of
trusts.

the said debt or sum of £ and interest and all other the premises hereby assigned or intended so to be and every part of the same and the full benefit and advantage thereof unto the said A. B. and C. D. their executors administrators and assigns from henceforth as their own monies and effects absolutely and with full power and authority to and for the said A. B. and C. D. and the survivor of them his executors &c. to use the names and act as the attorney or attornies of the said parties hereto of the first part or any or either of them their or any of their executors administrators or assigns or of the said (*insolvent*) his executors administrators and assigns in recovering receiving and compelling payment of the said principal monies and interest and premises hereby assigned or intended so to be and in enforcing the benefit of the judgments and other securities for the same respectively in such manner as they shall think fit without any obligation by or on the part of any person or persons paying all or any part of the said principal monies and interest to see to the application thereof or be answerable or accountable for the misapplication or nonapplication of the same or any part thereof but nevertheless upon the trusts and for the ends intents and purposes hereinafter expressed and declared of or concerning the same *And* it is hereby agreed and declared that the said A. B. and C. D. their heirs executors administrators and assigns shall stand and be seised and possessed of the said plantations hereditaments monies securities and premises respectively hereby released and assigned or intended so to be *Upon Trust* for the further better and more effectually securing to the said (*trustees*) their executors administrators and assigns the payment of the said sum of £ and the interest thereof by the instalments and on the days or times and in manner hereinbefore mentioned and all costs charges and expenses to be occasioned by the non-payment thereof or any part of the same *And* for that purpose *upon further trust* that they the said A. B. and C. D. or the survivor of them his executors administrators and assigns do and shall at any time or times hereafter after default shall be made in payment of all or any part of the said sum of £ or the interest thereof at the respective times at which the same shall become due and payable as aforesaid when he or they shall be thereunto in writing by the said (*T.*) or the survivors or survivor of them his executors administrators and assigns requested or at any time or times when he or they shall be so requested by the said (*P.*) his executors administrators or assigns call in and by

all lawful ways and means compel and enforce the payment of the said principal monies and interest hereby assigned or intended so to be or such part or parts thereof as shall then remain unpaid *And* do and shall by with and out of the money so to be gotten in and received or as the case shall require by with and out of the money which shall be voluntarily paid to him or them by the said (*I.*) his heirs executors administrators or assigns in full or in part satisfaction of the securities hereby assigned or intended so to be In the first place deduct and retain to and for himself and themselves all costs charges and expenses of and attending or relating to the execution of the trusts hereby declared *And* in the next place pay to the said (*T.*) or the survivors &c. not only the sum or sums of money or instalments in the payment whereof the said (*P.*) his executors administrators or assigns shall make default at the time or respective times herein-before mentioned but also all such and so many of the said instalments of the said sum of £ as shall then remain unpaid although and notwithstanding the bills so accepted by the said (*P.*) as aforesaid shall not then have become due and also all interest which shall be then due in respect of all or any part of the said sum of £ and all costs charges and expenses to be occasioned by the nonpayment of the same the said A. B. and C. D. or the survivor of them his executors administrators or assigns causing the said bills respectively when and as the same respectively shall be paid to be given up to him or them *And* immediately after the same shall be so given up delivering the same to the said (*P.*) his executors administrators or assigns to be cancelled *And* lastly pay the residue or surplus if any of the money to be received as aforesaid and which shall not be applied for the purposes aforesaid unto the said (*P.*) his executors &c. for his and their own use and benefit *And* it is hereby further declared and agreed that the said A. B. and C. D. their heirs executors administrators and assigns shall permit and suffer the said (*P.*) his executors administrators and assigns to receive and take for his and their own use the interest income and annual produce of the said monies securities and premises until default shall be made in payment of all or any part of any or either of the said instalments of the said sum of £ and the interest thereof at or on the days or times and in manner so as aforesaid appointed for the payment of the same *And also* that after payment by the said (*P.*) his executors administrators or assigns of the said sum of and the interest thereof and such costs

No. CXCI.
*Of Debt and
Securities.*

To deduct costs
in execution of
trusts.

To pay instal-
ments in case
of default.

To pay residue
to purchaser.

No. CXCI.
*Of Debt and
Securities.*

&c. if any as aforesaid the said A. B. and C. D. their executors administrators and assigns shall on the request and at the expense of the said (P.) his executors administrators or assigns release and assign the said monies securities and premises or such part and parts of the same as shall then remain undisposed of unto and to the use of the said (P.) his executors administrators and assigns or as he or they shall direct And it is hereby further declared &c. *(that the receipts of A. B. and C. D. shall be sufficient discharges, also if necessary a clause of indemnity to A. B. and C. D.)* In witness &c.

BARGAINS AND SALES OF TIMBER.

- | | |
|---|--------------------------------------|
| 1. Liberty to cut and carry away. | 3. Sale of Timber by Tenant in Tail. |
| 2. Timber Personal Estate or otherwise. | 4. Inrolment of Bargain and Sale. |
| | 5. Stamp. |

Liberty to cut
and carry away.

SECT. 1. Although on a sale of trees the liberty to cut and carry them away is implied by law, yet it is prudent that the intention of the parties should be expressly declared as to the extent of the power to be granted to the purchaser.

Timber personal
estate or other-
wise.

2. If the vendor of timber, who is owner of the estate, do not intend that the produce of the sale should go to his personal representatives, a declaration to that effect must be inserted in the bargain and sale, otherwise it has been held, that all timber which is agreed to be sold, and is cut after the vendor's death, will be part of his personal estate, Sugd. V. & P. 178, 8th edit.; 7 Ves. 437.

Sale of timber
by tenant in
tail.

3. A tenant in tail cannot charge the estate after his death; if, therefore, he agree for the sale of trees growing on the inheritance, and die before they are severed, the vendee will not be permitted to fell one tree, but the heir shall have all the trees that are not severed, as part of the inheritance, Plowd. 259; Perk. sect. 58; 11 Co. 50; Poph. 194. Some provision, therefore, for the death of the tenant in tail may be necessary in a contract for the sale of the growing timber by him.

Inrolment of
bargain and
sale.

4. A bargain and sale of timber need not be inrolled, unless it be conveyed with the freehold lands, 11 Co. 52.

Stamp.

5. As to the stamp, see GRANTS.

No. CXCII.

*Bargain and Sale of Timber.*No. CXCII
Of Timber.

This Indenture &c. Between (*Vendor*) of &c. of the one part Testatum.
 and (*Purchaser*) of the other *Witnesseth* That in consideration
 of the sum of £ to the said (*V.*) paid by the said (*P.*)
 at &c. the receipt whereof &c. He the said (*V.*) *Hath* granted
 bargained and sold and by &c. *Doth* grant unto the said (*P.*)
 his executors administrators or assigns *All* and singular the
 trees of oak ash birch sycamore and other trees as they are
 set out and marked for sale standing and growing in the places
 as hereinafter mentioned (*parcels*) Together with full (*a*) liberty Liberty to cut
down, &c.
 power and authority for the said (*P.*) his servants agents and
 workmen from the day of until the day
 of at all reasonable times to fell cut down grub up saw
 and work up the said trees and wood *And also* to lay and place
 the bark of the oak trees in convenient places for drying *And*
 to have free ingress and egress with horses waggons carts and
 carriages to enter into and upon the said premises for the pur-
 pose of taking and carrying away the said trees and wood with
 the bark of the oaks *And also* to dig and make saw-pits in
 convenient places in the said grounds and to cut turf and get
 such sods and earth as may be necessary for working and con-
 verting the said wood into charcoal doing as little damage or
 spoil thereby as may be and keeping in or near such parts of the
 said premises as shall be marked out by the said (*V.*) or his
 steward or agent *To Have and to Hold* the said timber and all Habendum.
 and singular other the premise hereby bargained and sold or in-
 tended so to be with their appurtenances unto the said (*P.*) his
 executors administrators and assigns absolutely to and for his
 and their proper use and benefit and as his and their own goods
 and chattels *And* the said (*V.*) doth for himself his heirs &c. Covenants from
vendor.
 hereby covenant &c. with and to the said (*P.*) his executors &c.
 that he the said (*V.*) at the time of sealing and delivery of these
 presents hath in himself good right full power and lawful and Good right to
sell.
 absolute authority to grant bargain and sell the said timber and
 other trees hereby bargained and sold or intended so to be *And* For quiet enjoy-
ment.
 that he the said (*P.*) his executors administrators and assigns from
 time to time and at all times hereafter within the space of
 months next after the date of these presents shall and lawfully

(a) As to this clause, see sect. 1.

No. CXCI. <u>Of Timber.</u>	may have hold take receive and enjoy all and singular the timber and other trees and premises hereby granted bargained and sold or intended so to be with their and every of their appurtenances and fell hew and carry away the same without any manner of hinderance interruption claim or demand whatsoever of from or by him the said (V.) his heirs executors administrators or assigns or any person or persons claiming by from through under or in trust for him or them And the said (P.) for himself his heirs &c. doth hereby covenant &c. with the said (V.) that he shall and will within the space of months from the date of these presents fell hew and cut down the said oak ash and other trees and draw and take them away with the boughs lops tops and bark thereof And shall and will stock up around the body of the tree at the distance of at least feet all the roots belonging to the said trees for the purpose of clearing the ground And also shall and will at his or their own costs and charges fill up all such saw-pits as shall for the purposes aforesaid have been made by him or them And also mend and repair all the hedges and fences in and about the said lands in all such places as shall be broken or otherwise damaged or destroyed in felling hewing or carrying away the said timber (a) In witness &c.
Covenants from purchaser.	
To clear away timber, &c.	
Fill up saw- pits, &c.	

Bargains and Sales of Goods.

Obs. 1. By the 29 Car. 2, c. 3, s. 17, no contract for the sale of any goods, wares and merchandizes, for the price of 10*l.* sterling or upwards, shall be allowed to be good, except the buyers shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment; or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents lawfully thereunto authorized.

(a) If the vendor be tenant in tail, see *supra*, sect. 2, and if it be so agreed, add, "And it is hereby further agreed and declared by and between the parties hereto that in case the said (V.) shall happen to die before the day of next ensuing and the said (P.) shall be prevented from felling and severing the said trees Then and in such case the executors or administrators of the said (V.) shall pay or allow unto the said (P.) his executors administrators or assigns the value of such or so many of the said trees as shall then remain unfelled and unsevered after the rate at which the same are hereby sold."

2. A bargain and sale of goods, as a separate deed, is commonly called a Bill of Sale (see *Bill of Sale*); but a bargain and sale or assignment of fixtures is frequently inserted in leases, or the assignments of leases, see *Index to Precedents*.

Of Goods.

BEQUESTS,

See *post*, WILLS.

BILLS.

BILL OF BOTTOMRY,

See *post*, SHIPPING.

BILL OF CREDIT,

See *post*, LETTERS.

BILLS OF EXCHANGE, PROMISSORY NOTES AND CHECKS.

I. BILLS OF EXCHANGE.

1. *Definition.*
2. *Bills of Exchange are simple Contracts.*
3. *Distinguished from simple Contracts, in what.*
Effect of altering a Bill of Exchange.
Consideration.
Negotiability.
4. *Particular Qualities of Bills of Exchange.*

I. PARTIES TO THE CONTRACT.

5. *Division of the Subject.*

1. *Who may be Parties to the Contract.*
6. *Persons not Merchants.*
7. *Corporations.*
8. *Infants.*
9. *Femes covert.*
10. *Agents.*

11. *Partners.*
Spiritual Persons.
12. *Executors.*
2. *Number and Character of Parties.*
13. *Who usually Parties.*
14. *Three Persons Parties.*
15. *Acceptor, &c. for Honour.*
3. *Rights and Liabilities of Parties.*
16. *Rights and Liabilities in general.*
17. *Drawer.*
Right of Action.
17. *Liability of Drawer to Holder.*
Presentment and Notice to Drawer.
18. *Effect of Indulgence as to a Drawer.*
19. *Interest payable by Drawer.*
20. *Liability of Indorser.*
21. *Notice to Indorser.*
22. *Effect of Indulgence to Indorser.*
23. *Liability of Acceptor.*
24. *Acceptor may revoke his Acceptance.*
25. *Not entitled to Presentment.*
Or Notice of Nonpayment.
26. *Interest payable by Acceptor.*
27. *How discharged from his Liability.*
Renunciation by Holder.
Cancellation a Waiver.
Extinguishment.

II. FORM OF THE INSTRUMENT.

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To be in Writing.
29. *In what Particulars.*
1. *Place where made.*
30. *Dating the Place usual and necessary.*
2. *Date.*
31. *Effect of omitting Date.*
3. *Sum superscribed.*
32. *Mode of Superscription.*
4. *Time when payable.*
33. *Effect of not stating Time.*
After Sight.

5. Word "Pay."

34. *Effect of the Word.*
6. *Payable upon Condition.*
35. *What is a good Bill or otherwise.*
As to the Mode of Payment.

7. The Payee.

36. *To whom made payable.*
Name of Payee in blank.
37. *Payable to Bearer.*
Legal Payee.
38. *Fictitious Payee.*
8. *Words "or Order" or "or Bearer."*
39. *Effect of the Words.*

9. Place where payable.

40. *Effect of inserting Name of Place.*
10. *Sums payable.*
41. *Statement of the Sum in Words.*
42. *It must be a specific Sum.*

11. Words "Value received."

43. *Effect of omitting the Words.*
12. *Drawer's Signature.*
44. *Necessity for Name to appear on the Instrument.*
45. *Manner of signing.*
46. *Signature by Agent.*
47. *By Persons as Partners or otherwise.*

48. *Time of signing.*
49. *How Signature may be pleaded.*

13. Direction to the Drawee.

50. *Effect of not putting Name of Drawee.*
Directed to two in the alternative.

14. Form of Acceptance.

51. *Usual manner of giving Acceptance.*
Parol Acceptance.
52. *Variations in the Form.*
Absolute Acceptance.
Qualified Acceptance.
Conditional Acceptances.
53. *Partial Acceptance.*

- 15. Words "*payable at*" in an
Acceptance.
- 54. Operation of these Words *for-*
merly.
- 16. Form of the Indorsement.
- 55. Indorsement in Blank.
in Full.
Effect of omitting the Words "*or*
Order."
- 56. Where to be written.
Misspelling.
- 57. Conditional Indorsement.
- 58. Indorsement for Part.
- 59. Restrictive Indorsements.

III. STAMP.

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- 1. Effect of not duly Stamping.
- 61. Bill not available in Evidence.
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- 2. What Instrument within the
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Nor Words giving a mere Autho-
rity.
- 3. What deemed Foreign Bills
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in Jamaica.
- 64. Bills drawn in and payable out
of Great Britain.
- 4. Alteration of Bills of
Exchange.
- 65. Instrument in fieri.
- 66. Effect of issuing a Bill.
What deemed issue of a Bill.
- 67. Nature of the Alteration of a
Bill.
- 5. Amount of Stamp.
- 68. In respect of the Date.
- 69. In respect of the Sum.

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- 71. Consideration presumed to be
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- 2. Nature of the Consideration.
- 72. What a good Consideration.
- 3. Want of Consideration.
- 73. Effect of want of Consideration.
Between immediate Parties.
Between remote Parties.
- 74. Failure of Consideration.
- 75. Parties liable for Want of Con-
sideration.
- 4. Illegality of Consideration.
- 76. Bills void for.

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- 77. Bills assignable though Choses
in Action.
- 1. What Instruments are trans-
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- 78. Bills payable to Order, &c.
- 79. Modes of Transfer.
- 2. Bills transferable by Indorse-
ment.
- 80. What comprehended under In-
dorsement.
- 81. Indorsement by Agents.
- 82. Indorsement by Executors and
Administrators.
by Partner.
- 83. Indorsement by Bankrupt or his
Assignees.
- 84. Indorsement by a Married
Woman.
- 85. Indorsement to Persons generally.
to Trustee.
- 86. Indorsement to Executor.
- 87. Indorsement of Bill in Blank.
- 88. Indorsement may be overwritten.
in what manner.
- 89. Special Indorsement.
- 90. Indorsement after Maturity.
- 91. Indorsement after Bill is paid.
- 92. Indorsement after Act of Bank-
ruptcy.
- 93. What Indorsements to be proved.
- 94. Proof of Title to a Bill.

3. *Bills transferable by Delivery without Indorsement.*

95. *What Bills pass by Delivery.*

96. *What is a sufficient Transfer by Delivery.*

97. *A Sale not a Transfer.*

VI. ACCEPTANCE.

98. *Definition of the Term. Division of the Subject.*

1. *By whom given.*

99. *Not to be given by Females covert or Infants.*

Not by Persons not Parties. Acceptance for Honour.

Acceptance by several, not Partners.

2. *Mode and Time of Acceptance.*

100. *Parol Acceptance, &c.*

In Writing under the 1 & 2 Geo. 4, c. 78.

Acceptance in Blank.

101. *Acceptance without Delivery.*

102. *Foreign Bills not within the Statute.*

What amounts to an Acceptance.

103. *Time of Accepting.*

Before Bill drawn.

3. *Terms and Extent of Acceptance.*

104. *Absolute or qualified Acceptance.*

105. *Conditional Acceptances.*

Condition to be performed.

4. *Effect of an Acceptance in Evidence.*

106. *What Acceptance admits.*

107. *Evidence that Effects are in Acceptor's Hand, when.*

108. *Proof of Acceptance.*

5. *Acceptance supra Protest for Honour.*

109. *Definition.*

110. *Who may accept for Honour.*

111. *Effect of Acceptance for Honour.*

Liability of Acceptor for Honour.

112. *Remedy for Acceptor for Honour.*

VII. PAYMENT.

113. *Contents of the Division.*

1. *To whom Payment to be made.*

114. *To the Holder.*

115. *To the wrongful Holder.*

2. *Time when Payment is to be made.*

116. *Payment on the Day.*

117. *Payment before Bill is due.*

3. *Mode of Payment.*

118. *Part Payment.*

119. *What amounts to Payment.*

Payment supra Protest for Honour.

VIII. PRESENTMENT.

120. *Kinds of Presentment.*

1. *Presentment for Acceptance.*

121. *What Bills must be presented. Time of presenting.*

122. *To whom to be made.*

123. *Bill to be left with Drawee.*

Liability of Parties in Case of Accident to Bill.

124. *Consequence of Neglect to present for Acceptance.*

2. *Presentment for Payment.*

125. *Division of the Subject.*

1st. *Person to whom to be made.*

126. *Presentment to be made to Drawee.*

2nd. *Time when to be made.*

127. *To be made on the Day when due, or a few Days after.*

128. *What Hours of the Day.*

129. *Bills payable on Demand.*

3rd. *Place where to be made.*

130. *Presentment at Residence of Drawee.*

At Place directed by Director.

At Place where made payable by Acceptor.

4th. *Mode of making Presentment.*

131. *Demand of Payment.*

5th. *Consequence of Neglect to Present.*

132. *Discharge of Drawee and Indorser.*

Presentment not to be dispensed with, when.

IX. NOTICE.

133. *Different Kinds of Notice.*

1. *Form of the Notice.*

134. *What Notice sufficient or otherwise.*

135. *Need not be in Writing.*

A verbal Message, when sufficient.

2. *Mode of giving Notice.*

136. *By Post.*

By other Conveyance.

3. *Time when Notice ought to be given.*

137. *Within reasonable Time.*

Where Parties live in different Places.

Burden of Proof lies on Plaintiff.

Delay, when excused.

4. *The Person by whom Notice should be given.*

138. *To be given by party to Instrument.*

Need not be actual Holder.

5. *The Person to whom Notice should be given.*

139. *General Rule.*

No Notice to one not Party to Bill.

To one of several Parties sufficient.

140. *Notice to Person in Attendance.*

141. *Notice to Drawer, when necessary or otherwise.*

142. *Notice to Acceptor not necessary.*

143. *Notice to Indorser necessary.*

Where there are several Indorsers.

6. *Consequence of Neglect to give Notice.*

144. *Discharge of Drawer, &c.*

7. *Excuse and Waiver of Notice.*

145. *Excusing Notice.*

146. *Waiver of Notice.*

X. PROTEST.

147. *Definition.*

As to Foreign Bills.

As to Inland Bills.

148. *Presentment of Foreign Bills. Noting.*

149. *Notice of Protest.*

150. *Protest for better Security.*

151. *In Case of Acceptance, &c. for Honour.*

152. *Where Protest should be made.*

153. *Proof of Protest.*

154. *Stamp on Protest.*

XI. REMEDY BY ACTION ON BILLS.

155. *Form of Action.*

Staying Proceedings.

156. *Effect of the New Rules.*

of 9 Geo. 4, c. 15, as to Variances.

of 3 & 4 Will. 4, c. 41, as to Initials.

157. *Defences to the Action.*

In Case of Bill being lost.

In Case of Forgery.

Infancy.

Payment or Satisfaction.

Statute of Limitations.

Indulgence.

Consideration.

SECT. 1. A bill of exchange is defined to be an open letter of request Definition.
from one man to another, desiring him to pay a sum named therein
to a third person on his account. It may be either inland or foreign.

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Bills of exchange are simple contracts.

2. A bill of exchange is a simple contract, and has for the most part the properties of a simple contract; therefore a contract by bill binds the personal representative and not the heir, as in the case of a contract by specialty, 2 Saund. 137, n. u; so it is within the Statute of Limitations, and must be sued for within six years after it becomes payable, (see *infra*, sect. 158); so it is to be considered as a simple contract debt in the course of administration, which an executor or administrator cannot discharge before debts by bond, without being guilty of a *devastavit*; and bills are *bona notabilia*, which follow the person of the debtor where he resides, and not, as in the case of specialty, where the bill is found at the holder's death, *Renew v. Axton*, Carth. 3.

Distinguished from simple contracts, in what.

3. Contracts by bills differ from other simple contracts in these particulars:

Effect of altering a bill of exchange.

First. That an alteration of the instrument vitiates the contract in the same manner as in the case of deeds, *Master v. Miller*, 4 T. R. 320; in error, 2 H. B. C. 140. But a distinction has been taken between alterations that are material and those which are not so, as altering the place of payment without the consent of the acceptor, held to be material, *M'Intosh v. Hayden*, Ry. & Mood. 362; *sed secus*, where it is done with his consent, *Farquhar v. Southey*, 1 Mood. & Malk. 17. As to the effect of altering a bill of exchange under the Stamp Acts, see *post*, sect. 65—67.

Consideration.

Secondly. In the case of simple contracts generally, the law presumes that there has been no consideration unless it appears, but in the case of contracts on bills, a consideration is presumed until the contrary appears, see further *post*, sect. 70—76.

Negotiability of bills.

Thirdly. Bills of exchange are negotiable instruments, although in the case of simple contracts generally, being *choses in action*, they are, by a rule of common law, not assignable, see further *post*, sect. 77 *et seq.*

Particular qualities of bills of exchange.

Fourthly. Bills are not the subjects of larceny at common law, but by the 7 & 8 Geo. 4, c. 29, s. 5, the stealing any bill is punishable in the same manner as larceny of any chattel of like value. Embezzlement of bills by clerks or servants is, by s. 47 of the same statute, made felony; and by s. 49 such embezzlement by agents is a transportable misdemeanor.

4. The peculiarities belonging to bills of exchange may be considered under the following heads: 1. Parties to the contract; 2. Form of the instrument; 3. The stamp; 4. Consideration; 5. Transfer and indorsement; 6. Acceptance; 7. Payment; 8. Presentment; 9. Notice; 10. Protest; 11. Remedy by action on bills.

I. PARTIES TO THE CONTRACT.

5. Under this head may be considered—1. Who may be parties ; 2. Number and character of the parties ; 3. The rights and liabilities of the parties. Contents of the
subdivision.

1. *Who may be Parties to the Contract.*

6. Every person having a capacity to contract may be a party to a bill of exchange, whether he be a merchant or not, although it was thought otherwise at one time, *Whetherley v. Sargfield*, 1 Show. 125, overruling *Oaste v. Taylor*, Cro. Jac. 306 ; *Eaglechild's case*, Het. 167 ; *Edgar v. Chut*, 1 Keb. 592. Persons not
merchants.

7. As a rule, a corporation can contract by writing only under their common seal ; but as an exception to this rule, it has been held that assumpsit will lie on a bill of exchange against a trading corporation, whose power of drawing and accepting bills is recognized by statute, *Murray v. East India Company*, 5 B. & A. 204 ; see also *East London Waterworks Company v. Bayley*, 4 Bing. 283 ; but a company incorporated for carrying on public works is not a corporation within the exception, *Broughton v. London Waterworks Company*, 3 B. & A. 1. Corporations.

8. An infant cannot bind himself by a bill drawn in the course of trade, *Williams v. Harrison*, Carth. 160, even for necessities, *Williamson v. Watts*, 1 Campb. 552. Infants.

9. A *feme covert* cannot bind herself by drawing a bill of exchange ; and by her indorsement she can transfer no interest, the whole property being vested in the husband, *Barlow v. Bishop*, 1 East, 432. Femes covert.

10. Bills of exchange may be drawn, accepted or indorsed by agent or attorney of the party ; and an agent for that purpose may be constituted by parol, when he is said to draw, accept or indorse by procuration. An agent will be personally liable on his drawing a bill, unless he either sign his principal's name only, or expressly states in writing his ministerial character, *Leadbitter v. Farrow*, 5 M. & S. 345 ; *Sowerby v. Butcher*, 2 Cr. & M. 368. A power of attorney authorizing an agent to demand, sue for, recover and receive, by all lawful ways and means whatsoever, all monies, debts, dues whatsoever, and to give sufficient discharges, does not authorize him to draw bills for his principal, *Murray v. East India Company*, *ub. sup.* recognized in *Goldstone v. Tovey*, 6 Bingh. N. C. 101 ; and where a power is given to accept bills, it must be exercised in the character of agent, and not in the character of a partner, *Attwood v. Munnings*, 7 B. & C. 278 ; *S. C.* 1 Man. & Ry. 66. Agents.

11. If a bill of exchange is drawn upon a firm and accepted by one of the partners, he must be understood to exercise his power to bind his partners, and to accept the bill according to the terms on which it Partners.

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was drawn, *Mason v. Rumsey*, 1 Campb. 384; so it is competent to any partner by his indorsement in the name of the firm to pass their interest in a bill, *Swan v. Steele*, 7 East, 210; see also *Vere v. Ashby*, 10 B. & C. 296; but where persons are partners in a particular and single transaction only, and not general partners, they are not liable even to a *bonâ fide* holder on a bill issued by one of them in relation to a different concern, *Baker v. Charlton*, 1 Peake, 80; so if one partner draw on other partners by name, and they individually accept, he may recover against them, because by such an acceptance a separate right is acknowledged to exist, *Neale v. Turton*, 4 Bing. 149; but the members of a joint-stock company cannot bind the company by bills, *Bramah v. Roberts*, 3 Bing. N. C. 963; so after a dissolution, one of the partners cannot bind the others by an indorsement, *Abel v. Sutton*, 3 Esp. 108; but articles of agreement between the partners that no one partner shall draw, accept or negotiate bills of exchange, will not protect the firm against bills drawn in violation of the agreement, unless the holder had at the time notice of the stipulation, *Galway v. Matthew*, 10 East, 264.

Spiritual persons.

Before the 1 & 2 Vict. c. 10, if spiritual persons were members of a company, bills drawn by the company were void under the 57 Geo. 3, c. 99, which restrains such persons from being occupied in trading, *Hall v. Franklin*, 3 M. & W. 259.

Executors.

12. An executor, like an agent, is personally liable on drawing any bill, though he describe himself as executor, unless he expressly confine his stipulation to pay out of the estate, *Childs v. Moriens*, 2 B. & B. 460; *S. C.* 5 Moore, 281; *Ridout v. Briston*, 1 Cr. & J. 231; *S. C.* 1 Tyrw. 90. The mere indorsement of a bill by one of two executors, in order to enable the other to receive the amount, is not sufficient to charge him who does not receive the money, *Hovey v. Blakeman*, 4 Ves. 608.

2. Number and Character of the Parties.

*Who are
usually parties.*

13. The parties to a bill in the commencement usually are the party making it, called the *drawer*; the party drawn upon, called the *drawee*, who, after acceptance, is called the *acceptor*; and the person in whose favour it is made, the *payee*, who, after the indorsement, is called the *indorser*, and the person in whose favour the indorsement is made, the *indorsee*, and by the transfer of the bill the number may be indefinitely extended. The party in possession of the bill, and entitled to receive its contents, is the *holder*.

*Three persons
parties.*

14. Regularly, there ought to be three persons parties to a bill of exchange, that is, drawer, drawee and payee; yet there may be only two, when the characters of drawer and payee are, as is sometimes the case, united in the same person; as if A. draw a bill thus: "Pay to me, or my order."

15. A person may likewise become a party to a bill either by accepting after protest for non-acceptance, for the honour of the drawer, where the drawee refuses to accept, or paying after protest for non-payment, either for the drawer or any of the indorsers, see further, *post*, sect. 109 *et seq.*

Bills of Exchange.

Acceptor, &c., for honour.

3. Rights and Liabilities of Parties.

16. The drawer's contract and responsibility is in the nature of a guarantee that the bill shall be duly accepted and paid when presented; and in case of default, and having due notice of the dishonour, he will pay the bill himself, with the expenses incurred thereon. The acceptor is the party primarily liable on the bill, being considered the principal debtor, and the other parties as sureties, *Clerk v. Devlin*, 3 B. & P. 366. The rights and liabilities of the indorser are precisely the same as those of the drawer, for every indorser is considered in the light of a new drawer, *Allen v. Walker*, 2 M. & W. 317.

Rights and liabilities in general.

17. If a bill is presented, and acceptance is refused, notice for non-acceptance must be given to the drawer, see further, *post*, sect. 133.

Drawer.

If there be any consideration or value for the acceptance, a drawer may sue the acceptor, without presenting it to him (unless it be accepted payable at a particular place, see *post*, sect. 54); and it seems to be now settled, that if he afterwards pay the amount, he may maintain, in his own name, and without any assignment of the bill from the payee, a special action on the case, and recover the money so paid, *Parminster v. Symons*, 1 Wils. 186; *S. C.* (in error), D. P. 2 B. P. C. 43.

Right of action.

17. If the bill be dishonoured when due, the drawer is responsible to the holder, *Cowley v. Dunlop*, 7 T. R. 572; but the bill must have been duly presented for payment, see *post*, sect. 125 *et seq.*; and the drawer is entitled to notice for non-payment, see further *post*, sect. 134 *et seq.*

Liability of drawer to holder.

If a bill is accepted for the accommodation of the drawer, that is without value or consideration, he engages to protect the acceptor, *Young v. Hockley*, 3 Wils. 346.

Presentment and notice to drawer.

18. If the holder of a bill gives time to the acceptor, this is a discharge to the drawer, *Philpot v. Briant*, 4 Bing. 717; *S. C.* 1 M. & P. 754; *S. C.* 3 C. & P. 244; but if the promise of forbearing to sue be not in writing, and consequently void, the drawer is in such case not discharged, *ib.*; so taking part of the amount of the acceptor, and offering to take a warrant of attorney to secure the payment of the residue by instalments, which offer was not accepted, was held not to be such a giving of time as would discharge a drawer, *Hewett v. Goodrich*, 2 C. & P. 468; the drawer is discharged only by the holder disabling himself from suing, *ib.*; and the rule as to discharging the drawer applies to accommodation as well as other bills,

Effect of indulgence as to a drawer.

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Interest payable
by drawer.

Fentum v. Pocock, 5 Taunt. 192, overruling *Laxton v. Peake*, 2 Campb. 185; and *Collott v. Haigh*, 3 Campb. 281.

19. A drawer is liable to pay interest only from the time that he receives notice of the dishonour, *Walker v. Baynes*, 5 Taunt. 240; *S. C.* 1 Marsh. 36.

Liability of
indorser.

20. The rights and liabilities of an indorser are similar to those of the drawer, he being in the nature of a new drawer, *Hill v. Lewis, Skinner*, 411; *Lake v. Hayes*, 1 Atk. 282; standing in the place of the original drawer, to whom the indorsee looks for payment, in case the drawee makes default, *Heylin v. Adamson*, 2 Burr. 670; but the indorsee may resort to either, *Bromley v. Frazer*, 1 Stra. 441; so where there are several indorsers, the names of the intermediate indorsers may be struck out, and a remote indorsee may declare as the immediate indorsee of the payee or first indorser; "for the fair holder of a bill may consider himself as the indorsee of the payee, and strike out all the other indorsements," per Lord Kenyon, C. J., *Smith v. Clarke*, Peake, 225; *S. C.* 1 Esp. 180.

Notice to
indorser.

21. So an indorser, like a drawer, is entitled to notice of dishonour, see further *post*, sect. 145; and it was formerly holden that an indorsee could not sue his indorser until he had demanded payment of the drawer; but it is now settled that such demand is unnecessary, *Heylin v. Adamson*, *ub. sup.*

Effect of in-
dulgence as to
indorsers.

22. Indulgence given by the holder to an acceptor will, as in the case of a drawer (see *supra*, sect. 18), discharge the indorser. Therefore, where the holder received of the acceptor part of the amount of a bill, and his security for the remainder, held that he could not sue the indorser, *English v. Darby*, 2 B. & P. 61; *S. C.* 3 Esp. 49. Discharging a prior indorser is a discharge to other prior indorsers, or to the persons whose names are on the bill prior to that of the party discharged, *Ellison v. Dezell*, Selw. N. P. 365, 10th ed.; but a holder may sue a prior indorser, although he has taken a subsequent indorser (*i. e.* one whose name was on the instrument subsequent to that of the party indulged) in execution, and afterwards let him go at large on a letter of licence, without having paid the debt, *Hayling v. Mulhall*, 2 Bl. 1235; *Clarence v. Dalton*, 4 M. & S. 226; but in the case of a drawer as well as an indorser, if it be done with their consent, they will not be discharged, *Clarke v. Devlin*, 3 B. & P. 363; but the consent must be unequivocally given, *Wethall v. Masterman*, 2 Campb. 179.

Liability of ac-
ceptor.

23. The acceptor is considered as the principal debtor, and primarily liable to all the parties to the bill, *Clarke v. Devlin*, *ub. sup.*; *Pownal v. Ferrand*, 6 B. & C. 442; *Yallop v. Eber*, 1 B. & Ad. 703; even the acceptor of an accommodation bill is, as against a *bonâ fide* holder, liable, *Harrison v. Courtauld*, 3 B. & Ad. 37; but such an acceptor is entitled to protection from the drawer, see

supra, sect. 17. The acceptor is liable to the full amount of the bill as between himself and third persons, but as between himself and the drawer only to the value for which the acceptance was given, *Darnell v. Williams*, 2 Stark. 166. Therefore, in an action against an acceptor, he may show that he accepted only part for value, *ib.*

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24. The liability of the acceptor does not attach by merely writing his name, but upon the subsequent delivery of the bill; therefore he is at liberty to cancel his acceptance before he has parted with the instrument, *Cox v. Troy*, 5 B. & A. 474; *S. C.* 1 D. & R. 38, overruling in part *Thornton v. Dick*, 4 Esp. 270; *Trimmer v. Oddy*, cited *Bentinck v. Dorrien*, 6 East, 200; and recognizing *Raper v. Birkbeck*, 15 East, 20.

Acceptor may
revoke his ac-
ceptance.

25. It is no defence for the acceptor that the bill has not been presented for payment, even when accepted payable at a specified place, unless he makes it payable at a particular place in pursuance of the statute (1 & 2 Geo. 4, c. 78); see *post*, sect. 54. And an acceptor is in no case entitled to notice for nonpayment, for he is presumed to be aware of the default, *Turner v. Hayden*, 4 B. & C. 1.

Not entitled to
presentment;

or notice of
non payment.

26. The acceptor is liable to pay interest on the bill from the time it became due; but not re-exchange, *Napier v. Schneider*, 12 East, 420; nor the expenses of postage or noting, *Kendrick v. Lomax*, 2 C. & J. 405. And if separate actions be brought against the acceptor, drawer and indorser, the court will not stay the proceedings on his application, unless he pay the debt and costs not only of his own action, but of that pending against the drawer and indorser, *Tidd*, O. P. 541, 9th ed.

Interest payable
by acceptor.

27. An acceptor may be discharged by a renunciation on the part of the holder, but nothing short of an express renunciation will be sufficient, *Dingwall v. Dunster*, Dougl. 235; *Farquhar v. Southey*, 1 M. & M. 14. Receiving interest from the drawer will not discharge the acceptor, *Attwood v. Crowdie*, 1 Stark. 483; and the renunciation for a part only is not sufficient, unless there be a consideration, *Parker v. Leigh*, 2 Stark. 228. The cancellation of the acceptor's name by the holder is a waiver of the acceptance; but if done by a third party, it must appear to have been done with the holder's consent, *Sweeting v. Halse*, 9 B. & C. 365; so the liability of the acceptor may be extinguished, by taking from him a security for the debt by specialty, provided that the security does not recognise the old instrument, *Tropenny v. Young*, 3 B. & C. 208.

How dis-
charged from
his liability.
Renunciation
by holder.

Cancellation
a waiver.

Extinguish-
ment.

II. FORM OF THE INSTRUMENT.

28. Although no precise form of words is necessary to constitute a bill of exchange, yet it must have some qualities to render it a valid instrument; an attention therefore to the form is of importance,

Requisites of
the instrument.

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Exchange.

Dawkes v. Lord de Loraine, 3 Wils. 207; *S. C.* 2 Bl. 782. An instrument which appears on the face of it to be a bill of exchange may be treated as such, although words be introduced into it for the purpose of deception, which might make it a promissory note, *Allan v. Manson*, 4 Campb. 115.

To be in
writing.

Although a bill must be in writing, yet if written in pencil it will be as valid as if written in ink, *Geary v. Physic*, 5 B. & C. 234; *S. C.* 7 D. & R. 653.

In what par-
ticulars.

29. The points to be attended to in relation to the form are, 1. The place where made; 2. The date of the bill; 3. The sum superscribed; 4. Time when payable; 5. The word "pay;" 6. Payable upon condition; 7. Payee; 8. Words "or order;" 9. Place where payable; 10. Sum payable; 11. Words "value received;" 12. The drawer's signature; 13. Direction to the drawee; 14. Form of the acceptance; 15. Words "payable at," &c.; 16. The indorsement.

1. *Place where made.*

Dating the
place usual and
necessary.

30. It is usual, and as it seems necessary, to date the bill at the place where drawn. In *Man v. More*, Ry. & Mood. 249, a general direction, as "London," or "Manchester," &c., was held sufficient to give the drawer of a bill notice of its dishonour; but in *Walter v. Haynes*, Ry. & Mood. 250, which was an action by an indorsee against an indorser, the same sort of direction was held to be too general to raise a presumption that the letter reached the particular individual intended.

2. *Date.*

Effect of omit-
ting date.

31. Regularly every bill of exchange ought to be dated; but if the date be omitted, or it be an impossible date, the court will intend the bill to bear date the day on which it was made, *Goddard's case*, 2 Co. 5; *De la Courtier v. Bellamy*, 2 Show. 422; *Giles v. Bourne*, 6 M. & S. 73. A bill of exchange is not vitiated by being post-dated, although a penalty of 100*l.* is incurred by so doing under the Stamp Act, 55 Geo. 3, c. 184.

3. *Sum superscribed.*

Mode of super-
scription.

32. The sum for which a bill is made is usually superscribed in figures, which will serve to aid any omission in the body of the bill, as where the word "fifty" was written without the word "pounds;" *Elliot's case*, 2 East's P. C. 951.

4. *Time when payable.*

Effect of not
stating time.

33. Where the time for payment of the amount is not stated on the face of the bill, it is payable immediately or on demand, that is, on presentation for payment. "If the day be fixed, it is not material

that the day be ever so distant;" per Willes, C. J., *Colehan v. Cooke*, Will. 396.

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The expression "after sight" on a bill means "so many days next after the bill shall be accepted, or else protested for non-acceptance, and not from the date of the bill, nor from the day that the same came to hand, or was privately exhibited to the party on whom it is drawn to be accepted, if he do not accept thereof; for the sight must appear in a legal way;" Marius, cited per Ld. Kenyon, C. J., *Campbell v. French*, in error, 6 T. R. 200.

After sight.

5. Word "pay."

34. No particular form of words is necessary to constitute an order to pay, but it appears that the words ought to amount to an order or direction to pay, *Morris v. Lee*, 2 Ld. Raym. 1396. A bill in this form, "Mr. N. will much oblige Mr. W. by paying to J. R. or order £ on account," was held to be a valid instrument, *Ruff v. Webb*, 1 Esp. 126; but an instrument in this form, "Mr. L. please to let the bearer have seven pounds, and place it to my account," "does not purport to be a demand made by a party having a right to call on the other to pay," per Ld. Tenterden, C. J., *Little v. Slackford*, 1 Mood. & Malk. 171.

Effect of the
word.

6. Payable upon condition.

35. To constitute a bill of exchange on which an action will lie, it must be made payable in all events, *Macleod v. Snee*, 2 Ld. Raym. 481. Where payment is made to depend upon the happening of a condition, or upon the contingency of an event which may never occur, the instrument is void, *Carlos v. Fancourt*, 5 T. R. 482; which was the case of a promissory note. So if the money is to be paid out of a fund which is uncertain, the instrument is not a bill of exchange, as an order to pay "out of rents," *Jenny v. Herle*, 2 Ld. Raym. 1361; *S. C.* 8 Mod. 266; or "out of money when received," *Haydock v. Lynch*, Raym. 1563; *Danhes v. Lord Deloraine*, 3 Wils. 307; *S. C.* 2 Bl. 382; or "out of growing subsistence," *Joceline v. Lessere*, 10 Mod. 294; *S. C.* Fort. 281. But where the thing is of a public nature, and therefore morally certain, as where it is to depend upon the paying off a government ship, it has been held good, *sed quere*.

What is a good
bill or other-
wise as to the
mode of pay-
ment.

7. The Payee.

36. A bill may be made payable to the drawer himself or to a third person. Neither need be named, if it be made payable to order or to bearer, *Anon.* Comb. 401; but it must not be made payable in the alternative, as to "A. or B.," being void for uncertainty, *Blankenhagen v. Blundell*, 2 B. & A. 417; but a bill "payable to B. C.," there being father and son of the same name, is *prima facie* payable

To whom made
payable.

<i>Bills of Exchange.</i>	to the father, yet evidence is admissible to show that the son was really meant, <i>Sweeting v. Fowler</i> , 1 Stark. 106; and a bill issued in blank for the name of the payee may be filled up by a <i>bonâ fide</i> holder with his own name, and will bind the drawer, <i>Crutchley v. Clarence</i> , 2 M. & Sel. 90; so a bill made "payable to the order of —," may be filled up by any person who can show that he came regularly into the possession of it, <i>Crutchley v. Mann</i> , 5 Taunt. 529; <i>S. C.</i> Marsh. 29; and a bill may be declared on in that form, <i>Attwood v. Griffin</i> , Ry. & Mood. 425.
Name of payee in blank.	
Payable to bearer.	37. If a bill be made payable to "Ship <i>Fortune</i> or bearer," it is good, for in law it is payable to bearer only without any indorsement, <i>Grant v. Vaughan</i> , 3 Burr. 1516; so if made payable to "J. S. or bearer," J. S.'s indorsement is not necessary, Bayl. Bills, 5th ed. 31.
Legal payee.	If a bill be made payable to "A. for the use of B." or "in trust for him," A. has the legal interest and is the legal payee as distinguished from B., who has the equitable interest, <i>Evans v. Cramlington</i> , Carth. 5.
Fictitious payee.	38. If a bill be made payable to a fictitious person, it may, in the hands of an innocent holder, be treated and declared on as a bill payable to bearer, <i>Tatlock v. Harris</i> , 3 T. R. 174; and the holder need not prove that the defendant (<i>acceptor</i>) had actually received value, <i>Vere v. Lewis</i> , ib. 182; recognized in <i>Minet v. Gibson</i> , 3 T. R. 481; <i>S. C.</i> affirmed in error, D. P. 1 H. Bl. 569; and it seems to be now settled that a bill of this kind may be declared on as a bill payable to bearer, <i>Tuft's case</i> , Leach, Cro. Law, 206; but parties cognizant of the transaction are not at liberty to avail themselves of the irregularity; and if money be paid by a <i>bonâ fide</i> indorsee in consideration of the bill being indorsed to him, he may recover it in an action for money had and received to his use, <i>Bennett v. Farnell</i> , 1 Campb. 130; see further as to payment, <i>post</i> , sect. 113 <i>et seq.</i>
8. Words "or order," or "or bearer."	
Effect of the words.	39. These words are necessary to make a bill of exchange negotiable, so as to make the drawer chargeable to the indorsee, <i>Hill v. Lewis</i> , 1 Salk. 133; although it is a valid instrument as between the parties themselves, ib.; and if it be assigned by the payee, he is chargeable at the suit of the indorsee, ib.
9. Place where payable.	
Effect of inserting name of place.	40. The name of the place where the bill is payable is not frequently inserted by the drawer; but where this is done, and the acceptor makes it payable at a place pointed out by the latter, held, that to make the drawer chargeable on nonpayment by the acceptor, a presentment at the place mentioned in the bill is necessary, <i>Gibb v. Mather</i> , 8 Bing. 214; <i>S. C.</i> 1 M. & Sc. 387; <i>S. C.</i> 2 Cr. & J. 254.

*Bills of
Exchange.*

10. *Sum payable.*

41. The sum is usually expressed in words at length; and where there is any variance between the sum mentioned in the body of the bill and that superscribed in figures, the latter would be rejected, *Marius*, 138; *Beawes*, 193; but an omission in the body of the bill may be aided by the superscription, see *supra*, sect. 32.

Statement of
the sum in
words.

42. A bill is not valid unless it be solely for the payment of a specific sum of money; therefore an instrument in these words, "Pay A. B. the proceeds of a ship, value about £2000," is not a bill of exchange, *Jones v. Simpson*, 2 B. & C. 318; *S. C.* 3 D. & R. 545. So an instrument in this form, "To pay £100, and also to deliver up a horse," is void, *Martin v. Chauntry*, 2 Stra. 1271; this last was the case of a promissory note, on which questions of this kind have for the most part been raised.

It must be a
specific sum.

11. *Words "value received."*

43. These words, though very frequently used, and formerly thought necessary to the validity of the bill, *Hodges v. Stevard*, Skinn. 346; *Anon.* 12 Mod. 345; *Banbury v. Lisset*, 2 Stra. 1211, are not held to be so now; consideration being presumed by law, it is now held that no argument or inference that it does not exist can be founded on the absence of the words. *Grant v. Da Costa*, 3 M. & S. 352.

Effect of omit-
ting the words.

12. *Drawer's Signature.*

44. The drawer's name ought to appear on the face of the instrument, but it is not necessary that it should be at the foot; a bill in this form, "Mr. A. B. requests Mr. C. D. to pay," &c. has been held valid, *Ruff v. Webb*, 1 Esp. 126.

Necessity for
name to appear
on the instru-
ment.

45. The signature may be in pencil, *Geary v. Physic*, 5 B. & C. 234; or by a mark or cross by way of signature, *Phillimore v. Barry*, 513; or it may be printed, *Schneider v. Norris*, 2 M. & S. 286.

Manner of
signing.

46. When an agent draws a bill for his principal, the signature should be in the name of the latter, as "J. W. (*agent*) for B. G. (*principal*);" or thus, "B. G. per procuration J. W." If an agent sign his own name only, he is personally liable, *Thomas v. Bishop*, 2 Stra. 955; *Lefevre v. Lloyd*, 5 Taunt. 749; *Eaton v. Bell*, 5 B. & A. 34; *Ledbitter v. Farrow*, 5 M. & S. 349.

Signature by
agent.

47. In the case of partners, one member may sign for himself and the others; or an agent may sign for the firm, *Wood v. Telford*, 2 Show. P. C. 219; but where they are not partners, each must sign for himself; in such case no one person has implied authority to sign for another, *Ex parte Hunter*, 2 Rose. 363; *Ex parte Collins*, 2 Cox, 427. Persons who are not partners may make themselves so by

By persons as
partners or
otherwise.

- Bills of Exchange.* the form of the instrument; see further, as to indorsement, *post.* sect. 81 *et seq.*
- Time of signing. 48. A bill of exchange, unlike a deed, may be executed before it is filled up; if therefore a stamped paper be signed, leaving blanks for the date, sum, time when payable, and name of the drawee, the drawer will be chargeable for any sum afterwards inserted within the amount warranted by the stamp, *Collis v. Emmett*, 1 H. Bl. 313; it is a letter of credit for an indefinite sum, *Russell v. Langstaffe*, 1 Dougl. 496.
- How signature may be pleaded. 49. It is not necessary in a declaration on a bill to state that the drawer signed, for drawing necessarily implies signing, *Erskine v. Murray*, 2 Stra. 817; *S. C.* 2 Ld. Raym. 1542; *S. C.* 1 Barnard. 87.

13. *Direction to the Drawee.*

- Effects of not putting the name of drawee. 50. A bill of exchange being in its original a letter, it ought to be properly addressed to the drawee; but where it was made payable at a certain place without mentioning the drawee's name, and he accepted it, it was not competent to him to make the objection, *Gray v. Milner*, 8 Taunt. 739; so a bill directed to A., or in his absence to B., being accepted by A., may be declared on without notice of B. *Anon.* 12 Mod. 447.
- Directed to two in the alternative.

14. *Form of the Acceptance.*

- Usual manner of giving acceptance. 51. The usual mode of accepting a bill of exchange is by writing the word "accepted" or "presented" only, and subscribing the drawee's name. Formerly, before the 1 & 2 Geo. 4, c. 78, s. 2, a bill of exchange might be accepted by parol or by collateral writing, *Johnson v. Collings*, 1 East, 98; *Powell v. Monnier*, 1 Atk. 611; and as the statute does not extend to foreign bills, the law in regard to them remains unaltered, see further as to acceptance, sect. 98 *et seq.*
- Parol acceptance.
- Variations in the bill. 52. By the form of the instrument the bill may be absolute, *i. e.* where there are no words of restriction; and qualified, when the acceptance has qualifying or restraining words annexed to it; if qualified with a condition, it is termed a conditional acceptance; as "to pay as remitted for," *Banbury v. Lissett*, 2 Stra. 1212; "to pay when in cash for the cargo of the ship *Thetis*," *Julian v. Shobrooke*, 2 Wils. 9; "to pay when goods consigned to him the (drawee) were sold," *Smith v. Abbott*, 2 Stra. 1152; or "if a house be given up to acceptor on a named day," *Swan v. Cox*, 1 Marsh. 176; so an answer "that a bill would not be accepted till certain stores were sold," *Pierson v. Dunlop*, 2 Cowp. 571. Whether an acceptance is conditional or absolute is a question of law, *Sproat v. Matthews*, 1 T. R. 182; but a mere verbal condition is inadmissible in evidence to qualify the absolute written engagement even between the original parties, *Hoare v. Graham*, 3 Campb. 57.
- Absolute acceptance.
- Qualified acceptances.
- Conditional acceptance.

53. An acceptance may be qualified or partial, if it engages to pay a part only, *Wegerslofe v. Keene*, 1 Stra. 214; or to pay at a time different from that at which the bill is made payable by the drawer, *Walker v. Attwood*, 11 Mod. 190.

Bills of Exchange.
Partial acceptance.

An acceptance may also be qualified as to the place of payment, see *infra*, the next section.

15. Words "payable at" in an Acceptance.

54. The legal operation of these words in an acceptance was, before the 1 & 2 Geo. 4, c. 78, a matter of some discussion, it not being settled whether the acceptor by using these words incurred only a restricted liability, that is, was not responsible, unless the bill were presented for payment at the place specified, or whether such acceptance was to be deemed a general acceptance, leaving the holder at liberty to present at the place specified, or elsewhere as he chose, *Sebag v. Abithol*, 4 M. & S. 462; and see prior cases ruling otherwise, *Rowe v. Young*, 2 B. & B. 165; *Callaghan v. Aylett*, 3 Taunt. 397; *Gammon v. Schmoll*, 5 Taunt. 344. By the statute it is now settled that if a bill be made payable at a particular place, without the words "only and not elsewhere," the acceptance shall be deemed a general acceptance; and it has been held to be immaterial whether the words denoting the place of payment be inserted by the drawer in the body of the bill, or by the acceptor in the acceptance; in either case if the words of the statute be not added, the acceptance will be general, so as to charge the acceptor, *Selby v. Eden*, 3 Bing. 611; *S. C.* 11 Moore, 511; recognized in *Fayle v. Bird*, 6 B. & C. 531; *S. C.* 9 D. & R. 639.

Operation of these words formerly.

16. The Indorsement.

55. An indorsement may be in blank, that is, by the mere signature of the party transferring, without any other words, the effect of which is to make the bill payable to bearer, *Peacock v. Rhodes*, 2 Dougl. 633; or it may be in full, or a special indorsement, which, besides the signature, expresses in whose favour the indorsement is made, as "pay A. B. or order;" but the omission of the words "or order" in an indorsement is not material, for the indorsee takes it with all its incidents, and among the rest with its negotiable quality, if the bill were originally made payable to order, *Moore v. Manning*, Com. 311.

Indorsement in blank,

in full.

Effect of omitting the words "or order."

56. An indorsement, as the word imports, is a writing on the back; but it has been held that a writing on the face of the instrument is of the same effect, *R. v. Biggs*, 1 Stra. 18; and a misspelling will not necessarily avoid an indorsement, *Leonard v. Wilson*, 2 C. & M. 589.

Where to be written.

Misspelling.

57. An indorsement may be conditional in this form, "pay the within sum to A. B., or order, upon my name appearing in the Gazette as ensign in any regiment of the line between the 1st and 64th,

Conditional indorsement.

<i>Bills of Exchange.</i>	if within two months from this date;" and it has been held that upon such an indorsement neither A. B. nor his indorsee can acquire any right to the money, unless the event specified has occurred, <i>Robertson v. Kensington</i> , 4 Taunt. 30.
Indorsement for part.	58. A bill cannot be indorsed as to part only of the sum due, so as to subject the acceptor to two actions without his consent, <i>Hawkins v. Cardy</i> , 1 Ld. Raym. 360.
Restrictive indorsements.	59. An indorsement may be restrictive, so as to stop the negotiability, as "pay A. B. or order for my use," <i>Sigourney v. Lloyd</i> , 8 B. & C. 622; <i>S. C.</i> 3 Y. & J. 220; or "the within must be credited to A. B.," <i>Ancher v. Bank of England</i> , 2 Dougl. 615; or so as to exempt the indorser from personal liability, as in the case of agents, as "pay to A. B. <i>sans recours</i> ," <i>Goupy v. Harden</i> , 7 Taunt. 160; and it seems that a verbal agreement between the parties will have the effect of a restrictive or qualified indorsement, <i>Pike v. Street, Mood. & Malk.</i> 226; see further as to transfer by indorsement, <i>post</i> , sect. 80 <i>et seq.</i>

III. STAMP.

Stamp one of the requisites of a bill.	60. As to the stamp, which is one of the requisites to the validity of the instrument, it is proper to consider, 1st. The effect of not duly stamping; 2nd. What instruments are within the Stamp Acts; 3rd. What deemed foreign bills within the Stamp Acts; 4th. Alteration of bills of exchange; 5th. Amount of the stamp.
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1. *Effect of not duly stamping a Bill of Exchange.*

Bill not available in evidence.	61. A bill not duly stamped is not available in evidence in courts either of law or equity; therefore a bill of exchange written on a wrong stamp is no payment, <i>Wilson v. Vysar</i> , 4 Taunt. 288; and although the plaintiff had been guilty of <i>laches</i> , by neglecting to present the bill in time, yet the defendant was not discharged, <i>ib.</i> ; so the indorser of a bill drawn on an insufficient stamp is not discharged from the debt by the neglect of the indorsee to give him notice of dishonour, <i>Cundry v. Marriott</i> , 1 B. & Ad. 696; and the amount is not provable under a fiat in bankruptcy, <i>Ex parte Manners</i> , Rose, 68; so it cannot be read to the jury as evidence of the contract, <i>Jardine v. Payne</i> , 1 B. & Ad. 663; overruling <i>Bishop v. Chambre</i> , 1 Dans. & Lloyd, 83; but it may be looked at for a collateral purpose, <i>Gregory v. Fraser</i> , 3 Campb. 454; see also <i>Reed v. Deere</i> , 7 B. & C. 261; <i>Sweeting v. Halse</i> , 9 B. & C. 365; and it is no defence, on a prosecution for forgery, that the instrument was not duly stamped, <i>R. v. Hawhswood</i> , Bayl. 63.
May be looked at, when.	

2. *What Instruments within the Stamp Acts.*

Not a letter containing a mere request.	62. A letter from B. requesting A. to pay C. the balance due to him B., and that C.'s receipt should be a sufficient discharge, is not
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a bill of exchange requiring a stamp as such, under the 55 Geo. 3, c. 184. *Crowfoot v. Gurney*, 9 Bing. 372; *S. C.* 2 M. & P. 473; so an instrument in this form, "I hereby authorize A. B. to sell the bricks landed out of the Hope, and thereout to pay C. D. the remainder of his freight, £ signed W. J." is a mere authority, and does not require to be stamped as an order for the payment of money, *Humphreys v. Briant*, 4 C. & P. 157; or in these words, "We now authorize you to pay Messrs. (having revoked the former order in their favour) after you have paid yourselves the balance we owe you, from the net proceeds of our shipments to you, one-half of the remainder of the proceeds, provided the same shall not exceed £ ," *Hutchinson v. Heyworth*, 9 Ad. & Ell. 375; *S. C.* 1 P. & D. 266.

Bills of Exchange.

Nor words giving a mere authority.

3. What deemed foreign Bills within the Stamp Acts.

63. Bills made in a foreign independent state or at sea do not require an English stamp, nor a stamp of the country where made, *James v. Catherwood*, 3 D. & R. 190; and Ireland is for this purpose deemed a foreign state, *Snaith v. Mingay*, 1 M. & S. 87; so Jamaica, *Cruchley v. Mann*, 5 Taunt. 529; *S. C.* 1 Marsh. 29; and to constitute a bill "an inland bill," it must be drawn or dated at and from some place in the kingdom of England, or the town of Berwick-upon-Tweed, *Mahoney v. Astlin*, 2 B. & Ad. 478; so though the bill be accepted abroad, *Amner v. Clark*, 2 C. M. & R. 468; so though dated in some foreign place, *Jordaine v. Lashbrooke*, 7 T. R. 601.

Bills drawn in Ireland or Jamaica.

What inland bills within the act.

64. Bills drawn in but payable out of Great Britain are subject to a stamp duty by the 55 Geo. 3, c. 184; yet a bill sketched out and accepted here, but afterwards signed abroad, has been held to be made abroad, *Boehm v. Campbell*, Gow, 56.

Bills drawn in and payable out of Great Britain.

4. Alteration of Bills of Exchange.

65. Until a bill is issued, any alteration may be made therein with the concurrence of the parties, without rendering a new stamp necessary; as where a bill is altered from three to four months before acceptance, *Kennedy v. Nash*, 1 Stark. 452; so an accommodation bill may be altered before it has been negotiated, *Daws v. Richardson*, 5 B. & A. 674; and where a promissory note was sent back to be altered into a bill of exchange, the alteration may be considered as the mere correction of a mistake, *Webber v. Maddocks*, 3 Campb. 1.

Instrument in fieri.

66. After a bill has been issued, no material alteration can be made without a new stamp, *Wilson v. Justice*, Peak's Add. Cas. 96; and it is rendered altogether void by such alteration, so that no action can be maintained upon it even by an innocent indorsee, *Master v. Miller*, 4 T. R. 320. This rule, however, admits of two exceptions, first, as

Effect of issuing a bill.

<i>Bills of Exchange.</i>	to when it is to be deemed issued, and next as to the nature of the alteration. In one case a bill has been considered as not issued until it was in the hands of some person entitled to treat it as an available security in law, <i>Donnes v. Richardson</i> , 5 B. A. 674; <i>S. C.</i> 1 D. & R. 332; but in another case, an attempt to negotiate a bill, after acceptance, was held to be the same as actually negotiating it, <i>Calvert v. Roberts</i> , 3 Campb. 343; and the exchange of accommodation acceptances has been deemed a negotiation of those instruments, <i>Cardwell v. Martin</i> , 9 East, 190; <i>S. C.</i> nom. <i>Cardwell v. Martin</i> , 1 Campb. 79.
What deemed issue of a bill.	
Nature of the alteration of a bill.	67. Where immaterial alterations are made merely for the purpose of rectifying mistakes, and carrying into effect the original intention of the parties, they have been allowed without a fresh stamp, as the insertion of the words "or order" in an indorsement of a bill, <i>Kershaw v. Cox</i> , 3 Esp. 246; so altering the date of a bill, which by mistake had been dated on a corresponding day of the preceding month, instead of the day when drawn, <i>Jacobs v. Hart</i> , 6 M. & S. 142; <i>S. C.</i> 2 Stark. 45; but in such cases the alteration is admissible only where it is made in consequence of a mistake, and contrary to the original intention of the parties, not where it is made in consequence of an afterthought, <i>Knill v. Williams</i> , 10 East, 431; so on the same principle, any alteration in the date, sum, or time of payment, or the insertion of words, rendering negotiable an instrument which before was not so, has been held to be a material alteration, and as such making a new instrument that required a new stamp, <i>Bowman v. Nicoll</i> , 1 Esp. 81; <i>S. C.</i> 5 T. R. 537; <i>Walton v. Hastings</i> , 4 Campb. 223; <i>S. C.</i> 1 Stark. 215; <i>Outhwaite v. Luntley</i> , 4 Campb. 179.

5. Amount of Stamp.

In respect of the date.	68. The amount of the stamp upon a bill of exchange, under the statute 55 Geo. 3, c. 184, depends upon the date upon the face of the bill, not on the time it was actually drawn; and therefore the circumstance of its being post dated, and thereby made due more than two months after it was first drawn, is immaterial, and does not make a larger stamp necessary, <i>Peacock v. Murrell</i> , 2 Stark. 558, recognized in <i>Duck v. Braddyll</i> , M'Clel. 235; see also <i>Upstone v. Marchant</i> , 2 B. & C. 10; <i>S. C.</i> nom. <i>Upston v. Marshall</i> , 3 D. & R. 198. The terms "date" and "sight" are not synonymous; in the one case the time begins to run from the date, in the other, not until the presentment after sight, <i>Sturdy v. Henderson</i> , 4 B. & A. 592.
In respect of the sum.	69. The stamp duty is payable upon the sum actually due, not upon what may become due for the use of the money, <i>Pruessing v. Ing</i> , 4 B. & A. 204.

IV. CONSIDERATION.

70. Under this head may be considered—1. The proof of the consideration; 2. The nature of the consideration; 3. The failure of consideration; 4. The illegality of the consideration.

Contents of the
subdivision.

1. *Proof of Consideration.*

71. A bill of exchange is presumed to be made upon a good consideration, and the defendant is not at liberty to put the plaintiff on proof of the consideration which he gave for it, unless the defendant can make out a *prima facie* case against him by showing that the bill was obtained by fraud or force, *Collins v. Martin*, 1 B. & P. 648; *Duncan v. Scott*, 1 Campb. 100; *R. v. Headford (Marq.)*, 2 Campb. 574, recognized in *Heath v. Sansom*, 2 B. & Ad. 291; see also *Wells v. Masterman*, 2 Esp. 731; *Shirreff v. Wilks*, 1 East, 48; *Gill v. Cubitt*, 3 B. & C. 466; and formerly it was necessary to give the plaintiff notice to prove consideration, but the practice is otherwise now, *Heath v. Sansom*, *ub. sup.*

Consideration
presumed to be
good.

2. *Nature of the Consideration.*

72. An acceptance given by one man to another is a good consideration for a promise to accept another bill, *Rose v. Sims*, 1 B. & Ad. 521; so a previous debt, due before a bankruptcy, held to be a good consideration, *Brix v. Braham*, 1 Bing. 281; *S. C.* 8 J. B. Moore, 261; but an intention to evade the legacy duty will not be a good consideration, *Holliday v. Atkinson*, 5 B. & C. 501; *S. C.* 8 D. & R. 163.

What a good
consideration.

3. *Want of Consideration.*

73. In actions between immediate parties, as between the drawer and payee, the want of consideration may be gone into and insisted on as a defence to the action, *Puget de Bras v. Forbes*, 1 Esp. 117; but not so as between the drawer and indorsee, because, as it is said, "this would be enabling either of the original parties to assist in a fraud," per Ashurst, J., *Lichbarrow v. Mason*, 2 T. R. 71; therefore it is no defence to an action by an indorsee for value, that the acceptor received no value, *Collins v. Martin*, 1 B. & P. 651.

Effect of want
of consideration.

Between imme-
diate parties.

Between remote
parties.

74. A consideration may be good at the time when the instrument is drawn, but it may afterwards fail; and the defendant, in that case, will stand in the same situation as if there had been a total want of consideration from the commencement, *Grew v. Bevan*, 3 Stark. 1147; and if there be a partial failure, there may, in some cases, be a reduction to the extent of the failure, Bayl. 495, 5th ed.; but where the extent of the failure involves a question of unliquidated damages,

Failure of con-
sideration.

*Bills of
Exchange.*

Parties liable
for want of con-
sideration.

it seems that the defendant's only remedy is by a cross action, *Obbard v. Betham*, Mood. & Malk. 483.

75. If a party, as between himself and his indorser, take a bill upon a good consideration, he may have his remedy against the prior parties, and it is no defence to the action that such parties have respectively put their names to the instrument without consideration, *Smith v. Knox*, 3 Esp. 47; *S. P. Charles v. Marsden*, 1 Taunt. 224; but if the defendant received no value, and the party to whom he indorsed the instrument transferred it to the plaintiff for no value, the latter cannot sue the defendant thereon, *Collins v. Martin*, *ub. sup.*

4. *Illegality of Consideration.*

Bill void for,
when.

76. Whenever a contract is founded on an illegal consideration, a bill given in respect of the agreement is void between such of the parties to the instrument as were concerned in the illegal bargain, *Robinson v. Bland*, 1 Bl. 256; *S. C.* 2 Burr. 1077; and the illegality of consideration may be shown by parol evidence, although in other cases parol evidence is inadmissible to establish that an instrument has been made upon any consideration inconsistent with that which is expressed, *Ridout v. Bristow*, 1 Cr. & J. 231, recognizing *Ranson v. Walker*, 1 Stark. 361. If the consideration be illegal by statute, the instrument so taken will be void in toto, although the consideration be valid as to a part of the security, *ib.*; see also *Scott v. Gilmore*, 3 Taunt. 226, *sed secus*, as it seems where several distinct bills are taken, then some of the bills shall be applied to the good debt, *Hubner v. Richardson*, cited Bayl. Bills, 516, n. 66, 5th ed.

V. TRANSFER AND INDORSEMENT.

Bills assignable
though *choses*
in action.

77. Bills of exchange, being *choses in action*, are, by the rule of the common law, not properly assignable; but in favour of commerce they form an exception to the rule, and are, by the custom of merchants, assignable to a third person, not a party to the original contract, so as to vest in the assignee a right of action in his own name.

Under this head may be considered—1. What instruments are transferable, and how; 2. Transfer by indorsement; 3. Transfer by delivery.

1. *What Instruments are transferable, and how.*

Bills payable to
order, &c.

78. Bills payable to order are negotiable, *Hill v. Lewis*, 1 Salk. 132; so if payable to bearer, *Grant v. Vaughan*, 1 Bl. 485; *S. C.* 5 Burr. 1516; and where these words are omitted, the bill is not transferable, that is, not so as to charge the acceptor or indorser, *Hill v. Lewis*, *ub. sup.*; but if a bill be once indorsed, and in the indorsement the words "to order" are omitted, it is nevertheless good to make the indorser chargeable to his indorsee, *Hill v. Lewis*, *ub. sup.*

An injunction will lie to restrain the negotiation of a bill void in its creation, *Lloyd v. Gurdon*, 2 Swanst. 186.

Bills of Exchange.

79. Bills of exchange may be transferred two ways; that is to say, bills payable to order may be assigned by a writing on the bill, called an indorsement; and bills payable to bearer, by mere delivery.

Modes of transfer.

2. *Bills transferable by Indorsement.*

80. Under this head may be considered—1st, By whom and to whom indorsements may be made; 2d, Effect of indorsement; 3d, Time of indorsement; 4th, Proof of indorsement.

What comprehended under indorsements.

81. [1st. *By whom and to whom Indorsements may be made.*] From the fact of a confidential clerk having indorsed bills, the jury may infer a general authority to indorse, *Prescott v. Flynn*, 9 Bing. 19; *S. C.* 2 M. & Sc. 18.

Indorsement by agents.

82. There is no difference whether an indorsement be made by the party himself or his representative, *Watkin v. Maule*, 2 J. & W. 243; and where an administratrix indorsed a bill, the indorsee, in an action against her, was not obliged to make proof of the letters of administration, *Rawlinson v. Stone*, 3 Wils. 1. A mere indorsement by one of two executors to enable the other to receive the amount of the bill, is not sufficient to charge him that does not receive the money, *Honey v. Blakeman*, 4 Ves. 608.

Indorsement by executors and administrators.

If a bill be drawn by two, “payable to us or our order,” and subscribed by both, it will have the effect of making them partners, though not in partnership, to the extent that the indorsement by one of them will be valid, *Carrick v. Vickery*, 2 Dougl. 653, n.; see also *Jones v. Radford*, 1 Campb. 83, n.

Or by partners.

83. In case of bankruptcy, the property in a bill of exchange must be transferred by the indorsement of the assignees, *Abel v. Sutton*, 3 Esp. 108; see also *Ramsbottom v. Lewis*, 1 Campb. 280.

Indorsement by bankrupt or his assignees.

84. A bill indorsed by a feme covert, with consent of her husband, is binding on him, and will pass the interest to the indorsee, *Prestwich v. Marshal*, 7 Bing. 565; *S. C.* 5 M. & P. 513; *S. C.* 4 C. & P. 594; see further as to parties, *ante*, sect. 8.

Indorsement by a married woman.

85. A bill of exchange may be indorsed *ad infinitum* until it is paid by or discharged on behalf of the acceptor, *Callow v. Lawrence*, 3 M. & S. 95. But where a bill is indorsed to another, and deposited with him as a trustee, he holds it subject to the trust, and if he indorse it over in breach of trust, the indorsee acquires no right thereby, *Evans v. Kymer*, 1 B. & Ad. 528; and where a bill was lodged in a banker's hands to be applied to a particular purpose, but he became bankrupt without having so applied it, held that the same was claimable from the assignees, *Ex parte Aiken*, 2 Mad. 192.

Indorsement to persons generally.

To trustee.

86. Where a bill was indorsed to a party who was dead, but of whose death the indorser was ignorant, the interest was held to pass to

Indorsement to executor.

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Exchange.*

the executor, who might sue for it in his character as such, *Murray v. E. I. Company*, 5 B. & A. 216; see further as to parties to bills, *ante*, sect. 5 *et seq.*; for a bare indorsement, without other words purporting an assignment, works no change of property, *Lucas v. Haynes*, 1 Salk. 130; and the holder cannot recover against the acceptor, *Trimby v. Vignier*, 1 Bing. N. C. 151; *S. C.* 4 M. & Sc. 695.

Indorsement of
bill in blank.

87. [2nd. *Effect of Indorsement.*] A bill with a blank for the payee's name is not a legal instrument until filled up, *R. v. Randell*, Bayl. Bills, 31, 5th ed.; but it may be filled up by a *bonâ fide* holder with his own name, and it will bind the drawer, *Crutchley v. Clarence*, 2 M. & S. 90, if he can show that he came regularly in possession of it, *Crutchley v. Mann*, 5 Taunt. 529; *S. C.* 2 Marsh. 29; and a bill may be declared on in that form, *Atwood v. Griffin*, Ry. & Mood. 425; *S. C.* 2 C. & P. 368. "An indorsement in blank gives a joint right of action to as many as agree to sue on the bill," *Ord v. Portal*, 3 Campb. 239; and see *Lowe v. Copestake*, 3 C. & P. 300; *Machell v. Kinnier*, 1 Stark. 499.

Indorsement
may be over-
written, in what
manner.

88. Where an indorsement is in blank, the holder may overwrite what he pleases, *Edie v. E. I. Company*, 1 Bl. 297; 2 Burr. 1216; and where a bill indorsed in blank was delivered to B., and he overwrote "pay the contents to C.," without subscribing his own name, held that he was not liable to C. as indorser, *Vincent v. Horlock*, 1 Campb. 442.

Special indorse-
ment.

89. The transfer of a bill of exchange by special indorsement is similar in effect to the making a new bill, the indorser being in the nature of a new drawer, *Skinn.* 411; 1 Atk. 282; 2 Burr. 674; 3 East, 482; but a special indorsement does not transfer the property in the bill until delivery, *R. v. Lambton*, 5 Price, 428; an indorser is, however, bound by his indorsement, although the bill is bad, *Ex parte Clarke*, 2 B. C. C. 230.

Indorsement
after maturity.

90. [3rd. *Time of the Indorsement.*] An indorsement may be made even before the bill itself, *Russell v. Wagstaffe*, 1 Doug. 496; and it may be made even after a bill is due; but this is a circumstance which may reasonably excite suspicion, *Browne v. Davies*, 3 T. R. 801. "After a bill is due, it comes disgraced to the indorsee, and it is his duty to make inquiries concerning it. If he takes it, though he gives a full consideration for it, he takes it on the credit of the indorser, and subject to all the equities with which it may be incumbered," per Lord Ellenborough, *C. J.*, *Tierson v. Francis*, 1 Campb. 19; but the assignee of an undue bill was held not to be affected by an infirmity in the title of an antecedent party, where his immediate assignor might have maintained an action, *Chalmers v. Lanion*, 1 Campb. 388.

91. If a bill is paid and afterwards indorsed before it becomes due, it is a valid instrument in the hands of a *bonâ fide* indorsee, *Burbridge v. Manners*, 3 Campb. 194; but it cannot be indorsed or negotiated after it has been once paid, if it would make parties liable who would otherwise be discharged, *Beck v. Robley*, cited Bayl. Bills, 125, 5th ed.; 1 H. Bla. 89, n.; see also *Bartrum v. Caddy*, 1 P. & D. 207; *S. C.* 9 Ad. & Ell. 275.

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Indorsement after bill is paid.

92. In every action by an indorsee against an acceptor, it is a good defence that the indorsement was made after an act of bankruptcy by the indorser, *Pinkerton v. Adams*, 2 Esp. 611; unless a party ought to have indorsed and omitted so to do, his indorsement in such case after bankruptcy held to be good, *Smith v. Pickering*, cited 1 Esp. N. P. C. 40, 4th ed.

Indorsement after act of bankruptcy.

93. [4th. *Proof of Indorsement.*] The acceptance of a bill admits merely the drawing, not the indorsement; therefore if a bill be drawn and indorsed by procuration, in an action by the indorsee against the acceptor, the indorsement by procuration must be proved, *Robinson v. Yarrow*, 7 Taunt. 455; *S. C.* 1 Moore, 150; but in an action against the indorser, it is not necessary to prove any indorsements prior to the defendant's, *Crutchlow v. Parry*, 2 Campb. 182; so if the payee of a bill deliver it with his name indorsed on it to another, no proof is required of the handwriting of the indorsement, *Glover v. Thompson*, Ry. & Mood. 403.

What indorsement to be proved.

94. In order to derive a title to a bill of exchange payable to order, it is necessary for the indorsee in an action against the acceptor to prove the handwriting of the payee or first indorser, *Smith v. Chester*, 1 T. R. 654; for an indorsement by a person of the same name with the payee will not confer a title, and "such indorsement," if made with the knowledge that he is not the person to whom the bill was made payable, is a forgery, and no title can be derived through a forgery, per Ashurst, C., *Mead v. Young*, 4 T. R., per three justices, Kenyon, diss.

Proof of title to a bill.

As to the form of the indorsement, see *ante*, sect. 55; as to the liability of the indorser, see *ante*, sect. 20; as to notice to the indorser, see *post*, sect. 143.

3. *Bills transferable by delivery without Indorsement.*

95. Bills payable to bearer, or bills payable to order, if only indorsed in blank, pass by delivery; and if an assignee take them, without any knowledge of defect of title, *bonâ fide* and for a valuable consideration, such assignee is entitled to payment, *Boehm v. Sterling*, 7 T. R. 427; *sed secus* if he has notice of such defect, *ib.*; and this applies particularly to bills payable after sight or after date, if they are over-due, see *ante*, sect. 90; also *post*, as to bills lost or otherwise, sect. 157.

What bills pass by delivery.

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What is a sufficient transfer by delivery.

96. If a holder receive from a drawee a second note, and get it discounted in order to provide for the first, there is a sufficient transfer to him of the second bill to enable him to retain the proceeds, *Walsh v. Tyler*, 2 Stark. 288; so if A. employs B. to get bills discounted for him, and B., in order to effect the discounting, indorsed them, held that A.'s estate must relieve B.'s liability incurred by the indorsement, *Ex parte Robinson*, Buck, 113; but the mere discounting a bill, without the indorsement of the party who receives the money, does not give the holder of the bill any claim against such party, *Ex parte Roberts*, 2 Cox, 171.

A sale not a transfer.

97. If a bill be payable to A. or bearer, and A. delivers it over for money received, this is a sale of the bill, and the seller does not become a new security, *Bank of England v. Newman*, 1 Lord Raym. 442; recognised in *Emly v. Lye*, 5 East, 7; so if a bill be delivered without indorsement, not in payment of a pre-existing debt, but by way of exchange for goods or other bills, such a transaction is held to be a sale of the bill by the party transferring it, and a purchase of the instrument, with all risks, by the transferee, *Fenn v. Harrison*, 3 T. R. 759; therefore if the seller became a bankrupt, and the bill was dishonoured, held, that the vendee could not prove the amount under the commission, *Ex parte Shuttlevorth*, 3 Ves. 368.

VI. ACCEPTANCE.

Definition of the term.

Division of the subject.

98. Acceptance in its ordinary sense signifies an engagement by the drawee to pay the bill when due, *Clark v. Cock*, 4 East, 72. Under this head may be considered—1, By whom to be given; 2, Mode of giving; 3, Terms and extent of the acceptance; 4, Effect of an acceptance in evidence; 5, Acceptance *supra protest* for honour. As to the liability of the acceptor, see *ante*, sect. 23; as to the form of the acceptance, see *ante*, sect. 51; as to the presentment for acceptance, see *post*, sect. 120 *et seq.*; as to the notice for non-acceptance, see *post*, sect. 133 *et seq.*

1. *By whom an acceptance may be given, or the contrary.*

Not to be given by *feme covert* or infant, &c., but by partners or agents.

99. An acceptance given by a *feme covert* or infant is absolutely void; but an acceptance by one partner may bind the firm, and so an agent may accept for his principal, if he do it in the proper form, see further, *ante*, sect. 6 *et seq.* There cannot, however, be two separate acceptors to the same bill, so as to make them jointly responsible; where therefore two parties accepted a bill, but one of them was only a surety, it was held that the defendant's undertaking was only collateral, and ought to have been declared upon as such, *Jackson v. Hudson*, 2 Campb. 4; and no one can be liable as acceptor except the person to whom the bill is addressed, *Polhill v. Walter*, 3 B. & Ad. 114; and therefore where a person, not having authority

Not by persons not parties.

as an agent, accepted a bill for another, his acceptance was held void, but he was held liable in damages to the party damnified, *ib.*; but this rule does not apply to acceptances *supra protest for honour, ib.*, and see further, *post*, sect. 109. Where a bill is drawn upon several persons not partners, it should be accepted by all, or it may be treated as dishonoured, although it will bind such as do accept, *Marius, 16.*

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Acceptance for honour.

Acceptance by persons not partners.

2. Mode and Time of giving an Acceptance.

100. Before the 1 & 2 Geo. 4, c. 78, s. 2, an acceptance of an inland bill might be by parol, *Lumley v. Palmer, 2 Str. 1000; S. C. 7 Mod. 216; S. C. Cas. Temp. Hardw. 74*; or by collateral writing, *Powel v. Monnier, 1 Atk. 611*; but by that statute an acceptance must be in writing on the bill itself; yet an unsigned acceptance written on the face of a bill is not made invalid by the statute, and it is a question for the jury to determine whether it was intended to operate as an acceptance, *Dufour v. Oxenden, 1 Mood. & Rob. 90*; but in an action against the acceptor, it need not be averred that the acceptance was in writing, *Charlie v. Belshaw, 6 Bing. 529; S. C. 4 M. & P. 275*. An acceptance in blank is sufficient to charge the acceptor when the bill is afterwards drawn in pursuance of his authority. The 1 & 2 Geo. 4, c. 78, does not affect such acceptances, *Leslie v. Hastings, 1 Mood. & Rob. 119*; see further, *supra*, sect. 100.

Parol acceptances, &c.

In writing under the 1 & 2 Geo. 4, c. 78.

Acceptance in blank.

101. A mere acceptance, without delivery to the holder, is not sufficient to make the contract binding, *Cox v. Troy, 5 B. & A. 474; S. C. 1 D. & R. 38*; therefore before a bill is issued, an acceptance may be cancelled or revoked, *ib.*; see further, *ante*, sect. 24.

Acceptance without delivery.

102. The statute does not extend to foreign bills of exchange, and Ireland is for this purpose to be considered as a foreign country, even since the Union, *Mahoney v. Arlin, 2 B. & Ad. 478*; therefore the old law is still applicable to such bills; accordingly it has been held that a promise to accept would amount to an acceptance, *Pellans v. Van Mierop, 3 Burr. 1663*; and detaining a bill that has been presented for acceptance has been deemed an acceptance, *Harvey v. Martin, Bayl. Bills, 5th ed. 149*; and this applies now particularly to foreign bills, *Clarke v. Cock, 4 East, 57; Wynne v. Raikes, 5 East, 514; S. C. 2 Smith, 98; Mendizabal v. Machado, 6 C. & P. 218*; but words that were ambiguous were held not to amount to an acceptance, as "there is your bill, it is all right," *Powell v. Jones, 1 Esp. 17*; or "the bill should have attention," *Rees v. Warwick, 2 B. & A. 113*; so the parol acceptance of a bill drawn at Gibraltar, if satisfactorily proved, is binding on the acceptor, *Canepa v. Lanos, 2 Knapp, 276*.

Foreign bills not within the statute.

What amounts to an acceptance.

103. Regularly a bill should be accepted before the day on which it ought to be paid, yet an acceptance after that day will bind the drawee, *Jackson v. Pigott, Carth. 459; Wynne v. Raikes, ub. sup.*,

Time of accepting.

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Exchange.*

Before bill
drawn.

recognizing *Mutford v. Walcot*, 1 Lord Raym. 574; *S. C.* 1 Salk. 129; so a bill may be accepted before it is drawn and indorsed, and it will charge the acceptor to the extent warranted by the stamp, *Shultz v. Astley*, 2 Bing. N. C. 544; *S. C.* 2 Scott, 815; *S. C.* 7 C. & P. 99.

3. *Terms and Extent of an Acceptance.*

Absolute or
qualified accept-
ance.

104. An acceptance may be either absolute or qualified, see *ante*, sect. 52. It is qualified when the drawee undertakes to pay the bill in any other manner than according to the tenor and effect thereof, if qualified with a condition, it is called a conditional acceptance, see further as to the form *ante*, sects. 51—54. The holder of a bill may insist on an absolute engagement from the drawee, and may consider a qualified acceptance as a nullity, and protest for non-acceptance, *Sproat v. Matthews*, 1 T. R. 182; but he is precluded from afterwards considering it as an acceptance, *ib.* If the holder accept the qualified acceptance, he must give notice of the nature of the acceptance to the previous parties, or they will be discharged, *Sebag v. Abithol*, 4 M. & S. 466.

Conditional ac-
ceptances.

105. Whether an acceptance be conditional or not is a question of law. A mere verbal condition is inadmissible in evidence to qualify the absolute written engagement even between the original parties, *Hoare v. Graham*, 3 Campb. 57; but it seems that an acceptance might be rendered conditional by a contemporaneous writing, though not against a *bonâ fide* holder ignorant of the existence of such writing, *Boverbank v. Monteiro*, 8 Taunt. 846; but see 1 & 2 Geo. 4, c. 78, s. 2. A conditional acceptance becomes available on the performance of the condition, but not before, *Pierson v. Dunlop*, 2 Cowp. 571; *S. P. Miln v. Prest*, 4 Campb. 393; *S. C.* Holt, N. P. C. 180.

Condition to be
performed.

4. *Effect of an Acceptance in Evidence.*

What accept-
ance admits.

106. By acceptance the drawee admits the handwriting of the drawer, so that in an action against him it is not necessary to prove the handwriting, *Wilkinson v. Lutwidge*, 1 Stra. 648; but it seems not to be so conclusive as to prevent him from showing the contrary, *Smith v. Sear*, N. P. C. 270; so the handwriting, however, of the first indorser must be proved, for the acceptor is not supposed to look further than the handwriting of the drawer, *Smith v. Chester*, 1 T. R. 654; and an acceptance of a bill drawn by procuration is an admission of the agent's authority to draw, but not of his authority to indorse, *Robinson v. Yarrow*, 7 Taunt. 455; *S. C.* J. B. Moore, 150; but where the drawer is a fictitious person, the acceptor's undertaking is that he will pay to the order of the person who signed as drawer, *Cooper v. Myer*, 10 B. & C. 468.

107. Acceptance is *primâ facie* evidence that acceptor has effects of drawer's in his hands, *Vere v. Lewis*, 3 T. R. 182; and is an undertaking by him to pay the bill, *Parminter v. Symons*, 1 Wils. 185; *S. C.* in error, 2 B. P. C. 43; see further *ante*, as to the consideration, sect. 70 *et seq.*

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Evidence that effects are in acceptor's hands, when.

108. In an action by a payee or indorsee against the acceptor, the plaintiff must prove the handwriting of the person whose name appears as the acceptor, *Memot v. Bates*, Bull. N. P. 171 b; *Nelson v. Whittall*, 1 B. & A. 19; but proof of acceptance by one partner of a bill drawn upon a firm is sufficient to bind the firm, *Porthouse v. Parker*, 1 Campb. 82; yet in an action by an indorsee against a drawer, proof that the bill purported to have been accepted when indorsed to plaintiff does not render it unnecessary to prove an actual acceptance, *Smith v. Bellamy*, 2 Stark. 22, n.; and when made payable by acceptor at a particular place not his residence, proof of presentment at the place is not sufficient without proof of the acceptor's handwriting, *Hott v. Squire*, Ry. & Mood. 282; see also *Sedgwick v. Jager*, 5 C. & P. 199; *Warren v. Anderson*, 8 Scott, 384; or that it was accepted by his authority, *Goldstone v. Tovey*, 6 Bing. N. C. 98; *S. C.* 8 Scott, 394. Where an acceptor had once acknowledged the acceptance to be his handwriting, and the plaintiff had thereby been induced to take the bill; held, that he could not set up as a defence that the acceptance was a forgery, *Leach v. Buchanan*, 4 Esp. N. P. C.

Proof of acceptance.

5. Acceptance *supra* Protest for Honour.

109. When a drawee either cannot or will not accept, any person may, to save the credit of the drawer or other party, accept the bill for the honour of such party; and this he does by subscribing "Accepted *supra* protest in honour of A. B. &c." or as is more usual "Accepts S. P." Such a bill is called an "acceptance *supra* protest," because a protest should be made previous to either acceptance or payment for honour, *Vandewall v. Tyrrell*, 1 M. & M. 87; Bayl. Bills, 180, 5th ed. The name of the party, in whose favour such acceptance is made, is usually mentioned; but if it be not, it is considered to be made for the honour of the drawer, Beawes, 39.

Definition.

110. Any person may accept a bill *supra* protest, even the drawee himself, although he may refuse to accept it generally, Beawes, 33; and the same bill may, contrary to the general rule, see *supra*, sect. 99, be accepted by more than one person, as where a bill has been accepted by one person for the honour of one party, it may be accepted by another person for the honour of another, Beawes, 42; *Jackson v. Hudson*, 2 Campb. 447.

Who may accept for honour.

111. An acceptance for honour enures to the benefit of all the parties subsequent to him for whose honour it was made, Beawes, 33; Marius,

Effect of acceptance for honour.

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Liability of acceptor for honour.	21; Bayl. Bills, 176, 5th ed.; it is however but a conditional undertaking to pay if the drawee do not, <i>Hoare v. Cazenove</i> , 16 East, 391; in order therefore to complete the liability of the acceptor for honour, the bill must be presented for payment when it falls due, notwithstanding the formal refusal of the drawee, who may possibly in the mean time have received assets, <i>Williams v. Germaine</i> , 7 B. & C. 477; and it was held necessary that presentment to the drawee for payment ought to be averred in the declaration, <i>ib.</i> ; and where the acceptance was special, as thus, "Accepted by B. in honour of the payee, if regularly protested and refused when due," it was held absolutely necessary, before any claims could be made upon the acceptor for honour, to present the bill to the drawee at the place where he had a domicile, <i>Mitchell v. Baring</i> , 10 B. & C. 4; <i>S. C.</i> 1 Mood. & Malk. 381. As to the time when bills accepted for honour should be presented to the acceptor for honour, &c., see 6 & 7 Will. 4, c. 58.
Presentment to drawee.	
Presentment to acceptor.	
Remedy for acceptor for honour.	112. The acceptor for honour has his remedy for any damages incurred by his acceptance, not only against the party for whose honour the acceptance is made, but also all parties antecedent to him, whom that party might have sued, <i>Beawes</i> , 47; but where a bill has been protested for better security, and both the drawer and the acceptor become bankrupt, the acceptor for honour of the drawer must first resort to the drawer's estate, <i>Ex parte Wackerbath</i> , 5 Ves. 574; and where a bill has been accepted for the accommodation of the drawer, a person taking up a bill for the honour of the drawer has no right against the acceptor, who had no effects of the drawer in his hands, <i>Ex parte Lambert</i> , 13 Ves. 179.

VII. PAYMENT.

Contents of the division.	113. Under this head may be considered, 1. To whom payment ought to be made; 2. When to be made; 3. Mode of payment; 4. What amounts to payment. As to presentment for payment, see <i>infra</i> , sect. 125 <i>et seq.</i> ; as to notice for nonpayment, see <i>post</i> , sect. 133; as to protest for nonpayment, see <i>post</i> , sect. 147 <i>et seq.</i> ; as to enforcing and resisting payment, see <i>post</i> , sect. 157; as to the place where made payable, see <i>ante</i> , sect. 40.
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1. *To whom Payment should be made.*

To the holder.	114. Payment must be made to the holder or real owner of the bill, otherwise it is no discharge to the acceptor; therefore where A. drew a bill on defendant, which the latter accepted, and A. then indorsed it to the plaintiffs, his bankers, the bill on being presented for payment was dishonoured, but was afterwards paid by the defendant to A.; yet not being delivered up by the plaintiff, they brought an action on the bill against the defendant, the acceptor: held, that the payment to A. would not of itself have discharged the defendant, the
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plaintiffs having been at that time the holders, had not the plaintiffs themselves, in their accounts with the parties, treated the bill as having been paid, *Field v. Carr*, 5 Bing. 13; *S. C.* 2 M. & P. 46. If the holder be dead, payment should be made to his personal representative, even under a forged probate, before it is repealed, *Allen v. Dundas*, 3 T. R. 125; and *bonâ fide* payments by a bankrupt before fiat will be protected by the Bankrupt Acts, notwithstanding a prior act of bankruptcy, if the payee had no notice thereof.

115. If a bill be lost or stolen, payment to the finder or thief will be a discharge to the acceptor, if the payment be made in the usual course of business, and not under suspicious circumstances, *Gill v. Cubitt*, 3 B. & C. 466; *S. C.* 5 D. & R. 324, overruling *Lawson v. West*, 4 Esp. 56; the question of *mala fides* is for the consideration of the jury, *Peacock v. Rhodes*, 2 Dougl. 636; see further, as to the payee, *ante*, sect. 36.

To the wrong-
ful holder.

2. *Time when Payment is to be made.*

116. A bill, whether inland or foreign, ought to be paid on demand made within business hours on the day it falls due, otherwise the holder is entitled to treat it instantly as dishonoured, *Burbridge v. Manners*, 3 Campb. 193; but if payment be made within the day, it will be sufficient, and the notice of dishonour, if given, becomes of no avail, *Hartley v. Case*, 1 C. & P. 556. A plea of tender after the day of payment is insufficient, *Hume v. Petloe*, 8 East, 168; *sed secus* as to the drawer or indorser, *Walker v. Barnes*, 5 Taunt. 240; *S. C.* 1 Marsh. 36. A payment after action brought will not prevent the holder from proceeding for his costs, *Toms v. Powell*, 6 Esp. 40; *S. C.* 7 East, 536.

Payment on
the day.

117. Payment of a bill before it is due does not extinguish the debt; and if afterwards indorsed over, it is a valid security in the hands of a *bonâ fide* indorsee, *Burbridge v. Manners*, *ub. sup.*

Payment before
bill is due.

3. *Mode of Payment.*

118. It seems to be now settled (though at one time doubted) that part payment by a drawer will discharge the acceptor *pro tanto*, *Bacon v. Searles*, 1 H. Bl. 88, overruling *Johnson v. Kennion*, 2 Wils. 262; and where the drawer pays the whole, the acceptor is discharged, *ib.* Indorsements on bills of part payments by the holder are now, under 9 Geo. 4, c. 14, s. 3, not evidence for him in answer to the Statute of Limitations.

Part payment.

4. *What amounts to a Payment.*

119. Credit given to the holder of a bill by a party ultimately liable, is tantamount to payment, *Atkins v. Owen*, 4 Nev. & Man. 123; and it seems that a banker will not be considered guilty of neg-

What amounts
to payment.

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ligence in giving up bills of exchange to the acceptor upon receiving a check upon a banker for the amount, although it turn out that such check is dishonoured, *Russell v. Hankey*, 6 T. R. 12; but the drawer or indorser in such a case would be discharged, *Powell v. Roche*, 6 Esp. 76. The party paying a bill has a right to insist on its being delivered up to him, *Hansard v. Robinson*, 7 B. & C. 90; *S. C.* 9 D. & R. 860.

Payment *supra*
protest for
honour.

There may be a payment *supra protest* for honour as well as an acceptance (see *ante*, sect. 109—112), and the person so paying becomes, as indorsee of the bill, entitled to all remedies against those whose names are on it, *Mertens v. Winnington*, 1 Esp. 112.

VIII. PRESENTMENT.

Kinds of pre-
sentment.

120. Presentments are of two kinds, namely, 1. Presentment for acceptance; 2. Presentment for payment. As to notice of non-acceptance or nonpayment, see *post*, sect. 133 *et seq.*

1. *Presentment for Acceptance.*

What bills must
be presented.

121. When a bill is drawn payable within a certain time after sight, it must be presented to the drawee for acceptance, in order to fix the time when it is to be paid; but in other cases it is not necessary, though advisable, to procure an acceptance, as it facilitates the negotiating the instrument; and where it is expressly directed by the drawer, it is said that the holder is bound to present the bill for acceptance as soon as possible, *Marius*, 46.

Time of pre-
senting.

There is no fixed time for presenting bills drawn payable after sight; but due diligence must be used so that the bill be presented within reasonable time, *Muilman v. D'Equino*, 2 H. Bl. 565; whether due diligence has been used is a question of law, but dependent upon facts, *ib.* In *Hine v. Allely*, 4 B. & Ad. 624; *S. C.* 1 Nev. & Man. 433, recognized in *Bucton v. Jones*, 1 Man. & Gr. 83, the holder went to the place where the bill was addressed, and found the house shut up,—held, that this was a sufficient presentment. What is a reasonable time is a question for a jury in the case of a foreign as well as an inland bill, *Mellish v. Randon*, 9 Bing. 416; *S. C.* 2 M. & Sc. 570. So the holder of an inland bill payable after sight is not bound to present it instantly for acceptance; he may first put it into circulation, *Fry v. Hill*, 7 Taunt. 397. A delay to present until the fourth day a bill in London or within twenty miles thereof is not unreasonable, *ib.*; see also *Shute v. Robins*, 3 C. & P. 80; *S. C.* Mood. & Malk. 133.

To whom to be
made.

122. Presentment for acceptance should be made to the drawee himself or his authorized agent, and the demand should be clearly and unequivocally made; if made therefore upon one not known to be the drawee, it is not sufficient, *Cheek v. Roper*, 5 Esp. 175.

123. The bill ought to be left with the drawee for twenty-four hours, or until the next day, if he require it, *Bellasis v. Hester*, 1 Ld. Raym. 281; but if more than twenty-four hours are given, the holder ought to give notice to the antecedent parties, *Ingram v. Forster*, 2 Smith, 242. If, while a bill remains with a drawee, it be lost through his carelessness, he will be responsible; but if the party presenting it, by letting the private marks be known, enables another fraudulently to get possession of it, trover will not lie against the drawee, *Morrison v. Buchanan*, 6 C. & P. 18.
124. The neglect to present a bill for acceptance in due time and in a proper manner, when presentment is necessary, will discharge the drawer and indorser from liability on the bill, *Cheek v. Roper*, *ub. sup.*; but where a bill is given in payment of goods sold, which, upon presentment, is refused acceptance, the holder is not obliged to present it again, *Hickling v. Hardey*, 7 Taunt. 312; *S. C.* 1 J. B. Moore, 61.

Bills of Exchange.

Bill to be left with drawee.

Liability of parties in case of accident to bill.

Consequence of neglect to present for acceptance.

2. Presentment for Payment.

125. The matters connected with presentment for payment, and on which the principal questions have arisen, are—1. The person to whom to be made; 2. The time when to be made; 3. The place where to be made; 4. Mode of making presentment; 5. Consequence of neglect to make. As to notice, see *post*, sect. 133 *et seq.*

Division of the subject.

126. [1st. *The Person to whom to be made.*—As a rule, presentment ought to be made to the drawee; but if a bill be made payable at a banker's, a presentment there is sufficient, *Bishop v. Chitty*, 2 Stra. 1195; so presentment to the banker's clerk at the clearing-house is sufficient, *Reynolds v. Chettle*, 2 Campb. 596; *S. P. Robson v. Bennett*, 2 Taunt. 388; and if the party be dead, it must be made to his personal representative, Molloy, bk. ii. c. 10, s. 34; so if a drawee goes abroad, leaving an agent with power to accept bills, a bill so accepted must, when due, be presented to the agent for payment, *Phillips v. Astling*, 2 Taunt. 206.

To whom to be made.

127. [2nd. *Time when to be made.*—A bill need not be presented on the very day when it becomes due, in order to charge the acceptor, if presentment be made a few days after, it is sufficient, *Rhodes v. Gent*, 5 B. & A. 244; but a bill purporting to be payable within a certain limited time, is not payable until three days after, which are called *days of grace*, Beawes, 253; unless such a day was a Sunday or holiday; and in that case, by the 39 & 40 Geo. 3, c. 42, 7 & 8 Geo. 4, c. 15, it is payable on the second day, but otherwise a presentment on the second day is a nullity, *Wiffen v. Roberts*, 1 Esp. 261. And where a bill is drawn at a certain number of days after date or sight, those days are reckoned exclusively of the day on which it is drawn, but inclusively of the day on which it falls due, *Bellasis v.*

To be made on the day when due, or a few days after.

Days of grace.

Computation of time.

<i>Bills of Exchange.</i>	<i>Hester</i> , 1 Ld. Raym. 280; <i>Leftley v. Mills</i> , 4 T. R. 170; and by the custom of trade, a month is deemed to be a calendar month, <i>Cockell v. Gray</i> , 3 B. & B. 187.
What hours of the day.	128. Presentment for payment should be made within the hours of business, or at a reasonable hour, <i>Barclay v. Bailey</i> , 2 Campb. 527; therefore six in the evening is not an unseasonable hour to apply at the house of a merchant or tradesman for payment of an accepted bill, <i>Morgan v. Davison</i> , 1 Stark. 114; or even eight, <i>Barclay v. Bailey</i> , <i>ub. sup.</i> ; or at the office of an attorney, <i>Triggs v. Newnham</i> , 1 C. & P. 631; but if presentment is to be made at a banker's, it must be made within banking hours, <i>Parker v. Gordon</i> , 7 East, 385, recognised in <i>Elford v. Teed</i> , 1 M. & S. 28, where the presentment being made at six o'clock was held bad, overruling <i>Leftley v. Mills</i> , 4 T. R. 170, where the court refused to take notice of banking hours; but a presentment at a banking house after banking hours is sufficient, if a person be stationed at the banking house and return for answer "no order," <i>Garnett v. Woodcock</i> , 6 M. & S. 44; <i>S. C.</i> 1 Stark. 475.
Bills payable on demand.	129. A bill on which no time of payment is specified is payable on demand, and becomes due immediately on presentment; in such case the presentment must be made within a reasonable time, <i>Muelman v. D'Eguino</i> , <i>ante</i> , sect. 120.
At residence of drawee.	130. [3rd. <i>Place where Presentment ought to be made.</i>]—When no particular place is mentioned, presentment should be made at the residence of the drawee. If it be made at the address of the drawee as stated on the bill, and the house be closed, and inquiry be made in vain in the neighbourhood, held that the bill is dishonoured, <i>Hine v. Alleley</i> , 1 Nev. & Man. 433. Where the drawer of a bill makes it payable at a particular place, a presentment there is a material averment, and must be proved at the trial, <i>Hodge v. Fillis</i> , 3 Campb. 463; and the statute 1 & 2 Geo. 4, c. 78, which relates to acceptances only, has not altered the liability of the drawer, <i>Gibb v. Mather</i> , 8 Bing. 214; <i>S. C.</i> 2 C. & J. 254. Where a bill was made payable by the acceptor at a particular place, it was not settled before the 1 & 2 Geo. 4, c. 78, whether presentment at the particular place was necessary, see <i>ante</i> , sect. 54.
At place directed by drawer.	
At place where made payable by acceptor.	
Demand of payment.	131. [4th. <i>Mode of making Presentment.</i>]—The proper mode of making a presentment of a bill is to produce it and actually demand payment, leaving the instrument and waiting for payment is not sufficient, <i>Harvard v. Bank of England</i> , 1 Stra. 550, and discharges other parties, <i>Gillard v. Wise</i> , 5 B. & C. 134; but there need not be a personal demand; if payment be demanded at the acceptor's usual residence or place of business, of his wife or other agent, it is sufficient; for it is the duty of an acceptor, if he is not himself present, to leave provision for the payment.

132. [5th. *Consequence of neglect to present.*].—By the omission of the holder to present a bill for payment in due time and in a proper manner, the drawer and prior indorsers are discharged from all liability upon the instrument, *Heylen v. Adamson*, 2 Burr. 669. Death of the drawee or acceptor does not dispense with the necessity for presentment; if a representative has been appointed, presentment should be made to him personally, *Marius*, 134; *Molloy*, bk. ii. c. 10, s. 34; so the known insolvency or bankruptcy, or absconding, of the drawee, will not render presentment unnecessary, *Esdaile v. Sowerby*, 11 East, 117; so, although on the day before a bill becomes due, the holder is informed by the drawees that they have no effects in hand, and on the day of maturity learns from the drawer that he will endeavour to provide effects, and will call upon him again, it is still necessary to present the bill to the drawee, *Prideaux v. Collier*, 2 Stark. 57; but there is no occasion to present a bill for payment, where a right of action has already accrued upon the bill, by a regular presentment for acceptance, a refusal or neglect to accept, and due notice thereof, *Chit. Bills*, 372, 8th ed. citing *Price v. Dardell*; so where a bill is seized under an extent, the indorsers are not discharged by non-presentment, for laches is not imputable to the crown, *West on Extents*, 29, 30; however, advantage from neglect to present may be waived; see further, *infra*, as to notice.

Bills of Exchange.

Discharge of drawer and indorsers.

Presentment not to be dispensed with, when.

X. NOTICE.

133. A bill may be dishonoured either by non-acceptance or non-payment, and in both cases notice of dishonour must be given, as to which it is necessary to consider—1. The form of the notice; 2. The manner of giving the notice; 3. The time of giving notice; 4. The person by whom to be given; 5. The person to whom to be given; 6. The consequences of neglect to give notice; 7. Waiver of notice.

Different kinds of notice.

1. *Form of the Notice.*

134. The notice need not be in any particular form, but the language used, where a demand of payment is made, must be such as to convey notice to the party what the bill is, and that payment has been refused by the acceptor; where, therefore, the notice did not even inform the defendant that the bill had ever been accepted, it was held insufficient, *Hartley v. Case*, 4 B. & C. 339; *S. C.* 6 D. & R. 505; *Solarte v. Palmer*, 7 Bing. 629; *S. C.* 5 M. & P. 475, in error, 1 Bing. N. C. 194. A mistake in describing the bill or parties thereto will render the notice invalid, if it be such as is likely to deceive or mislead, *Beauchamp v. Cash*, 1 D. & R. N. P. C. 3.

What notice sufficient, or otherwise.

135. A notice need not be in writing, *Goldsmith v. Bland*, *Bailey Bills*, 276, 5th ed.; *Housego v. Cowne*, 2 M. & W. 348; a message sent to the party's counting-house, if he be a merchant, within the

Need not be in writing.

A verbal message, when sufficient.

Bills of Exchange.

usual hours of business, is sufficient, although no person is in attendance, *Cross v. Smith*, 1 M. & S. 545; *Bancroft v. Hall*, 1 Holt, N. P. C. 476; so a message left at the dwelling-house of a private person is sufficient, *Housego v. Cowne*, 2 M. & W. *ub. sup.*; see further, *infra*, as to the mode of giving notice.

2. *The Mode of giving Notice.*

Personal service not necessary.

By post.

Or other conveyance.

136. Personal service of a notice is not necessary, it being sufficient if sent to the counting-house, *Cross v. Smith*, *ub. sup.*; the usual and safest mode of conveying notice is by post, *Walter v. Haynes*, Ry. & Mood. 149, recognized and distinguished in *Mann v. Moon*, Ry. & Mood. 249; if there be no post, then the ordinary conveyance may be used, *Muilman v. D'Eguino*, 2 H. Bl. 565; and the employment of a private agent will suffice, provided he actually give notice, or take steps for that purpose, *Bancroft v. Hall*, *ub. sup.* As to the evidence which may be required of notice having been given, see *Hetherington v. Kemp*, 4 Campb. 194; *Hawkes v. Salter*, 4 Bing. 714; *S. C.* 1 M. & P. 750. In the case of a foreign bill, it is sufficient to send notice by the first regular ship, *Muilman v. D'Eguino*, *ub. sup.*

3. *Time when Notice ought to be given.*

Within reasonable time.

Where parties live in different places.

137. As a rule, notice must be given within a reasonable time; and although a bill may not require to be presented for acceptance at all, as a bill payable at a certain time after date, yet, if it be presented and dishonoured, notice is requisite, as in the case of non-payment, *Roscow v. Hardy*, 2 Campb. 458. What is a reasonable time is a question of law, depending on the facts of each case, *Darrach v. Savage*, Holt, 113; *S. C.* 1 Show. 155. Where parties live in different places it is sufficient to send off notice of dishonour the day following that on which the party receives intelligence of the dishonour, *Williams v. Smith*, 2 B. & A. 496; where both the parties live in the same place, notice must be given in time to be received in the course of the day following the day of dishonour, *Bray v. Hadwen*, 5 M. & S. 68, recognizing *Darbishire v. Parker*, 6 East, 3; it being laid down, "as a rule of practice, that each party in whose hands a dishonoured bill may pass should have one entire day for the purpose of giving notice," per *Ld. Ellenborough, C. J.*, *Bray v. Hadwen*, *ub. sup.*; and Sunday or any holiday is not to be reckoned as a day for giving notice, *Lindo v. Unsworth*, 2 Campb. 602; and a banker with whom a bill is deposited is, for the purpose of notice, to be considered as a distinct holder, and has a day to give notice to his customer, *Robson v. Bennett*, 2 Taunt. 388; but it lies on the plaintiff to show that notice has been given in due time, *Lawson v. Sherwood*, 1 Stark. 314. A delay in giving notice of dishonour may be excused

Burden of proof lies on plaintiff.

Delay, when excused.

by the holder's ignorance of the indorser's residence or place of business, *Bateman v. Joseph*, 12 East, 433; from his absconding or otherwise, *Walwyn v. St. Quinton*, 1 B. & P. 652; *Cross v. Smith*, 5 M. & S. 545; provided that the holder can show that he has used due diligence to discover where the party was to be found, *Bateman v. Joseph*, *ib. sup.*; and what is due diligence was held to be a question for the jury, *ib.*, overruling, as it seems, on that point, *Tindal v. Brown*, 1 T. R. 167; *Sturges v. Derrick*, Wightw. 76; but to institute the inquiry the day after intelligence of the dishonour is sufficient, *Browning v. Kinnear*, Gow, 81.

4. *The Person by whom Notice should be given.*

138. Notice of dishonour of a bill can only be given by some party to the instrument, the object of the notice being to apprise the person addressed that the bill has been dishonoured, and also to inform him that the holder looks to him for payment, *Tindal v. Brown*, 1 T. R. 167; he need not be an actual holder at the time, provided that, as a party, he may be entitled to call for payment, *Chapman v. Keane*, 3 Ad. & Ell. 193; but see *Ex parte Barclay*, 7 Ves. 597; and notice even from the acceptor himself has been deemed sufficient, *Rosher v. Kieran*, 4 Campb. 87; but a stranger is incompetent to give it, *Stewart v. Kennett*, 2 Campb. 177; so notice given by the owner or any other party enures to the benefit of all who stand between that party and the person receiving it, *Wilson v. Swabey*, 1 Stark. 34; Bayl. Bills, 254, 5th ed.; and notice may be given by any agent, who holds the bill, as a banker or attorney, in his own name, *Woodthorpe v. Laves*, 2 M. & W. 109.

To be given by party to instrument.

Need not be actual holder.

5. *The Person to whom Notice should be given.*

139. As a rule, when a bill is refused acceptance or payment, notice of such refusal must be given to any party to whom the holder wishes to have recourse, *Lafitte v. Slatter*, 6 Bing. 623; *S. C.* 4 M. & P. 457; but a person who is not a party to a bill cannot complain of want of notice, unless he can show that he has been prejudiced thereby, *Swinyard v. Bowes*, 5 M. & S. 62; therefore the same strictness of proof of notice is not necessary to charge a guarantee as would have been necessary to support an action upon the bill itself, *Warrington v. Furber*, 8 East, 242. Where parties are jointly liable, notice to one is notice to all, *Porthouse v. Parker*, 1 Campb. 82.

General rule.

No notice to one not a party to a bill.

To one of several parties sufficient.

140. Notice to any person in attendance at a counting-house or place of business is sufficient, *Crosse v. Smith*, 1 M. & S. 554; because it is the duty of a merchant to have some one there in attendance, *ib.*; and, therefore, if a counting-house be shut up and no one there, knocking and endeavouring to make one hear is sufficient notice, *Hone v. Bowes*, 16 East, 112; and, on the same principle,

Notice to person in attendance.

Bills of Exchange.

Notice to drawer when necessary or otherwise.

notice to the wife of a person, not a merchant, has been deemed sufficient, *Houseto v. Cowne*, *ub. sup.*; but notice to a man's attorney is not sufficient, *Crosse v. Smith*, *ub. sup.*

141. When a bill is dishonoured, notice must be given to the drawer, if the holder means to resort to him for payment. A drawer is, however, not discharged by the want of notice, where the bill has passed into the hands of a *bonâ fide* indorser for value, who had no knowledge of the dishonour, *Dunn v. O'Keefe*, 5 M. & S. 282. There is also another exception to the rule that want of notice discharges the drawer, when the latter has not effects in the hands of the acceptor at the time when the bill is drawn, *Bickerdiike v. Bollman*, 1 T. R. 405, recognized in *Claridge v. Dalton*, 4 M. & S. 226; but if the drawer has effects in the drawee's hands at the time the bill was drawn, although such effects were withdrawn before it became due, held, nevertheless, that he was entitled to notice, *Orr v. Magennis*, 7 East, 359; or at the time when it was presented, *Blackhan v. Doren*, 2 Campb. 503; or if the drawer has effects in the drawee's hands at any time between the drawing of the bill and its becoming due, he is entitled to notice, although he had not any such effects at the time of bill drawn, *Hammond v. Dufresne*, 3 Campb. 145; *S. P. Thackray v. Blackett*, *ib.* 164; but want of effects excuses from the necessity of presenting for payment as well as of notice of dishonour, *Terry v. Parker*, 6 Ad. & Ell. 507; *S. C.* 1 Nev. & Per. 752.

Notice to acceptor not necessary.

142. Where a bill is accepted payable at a particular place, it is not necessary, in an action against the acceptor, to prove notice of dishonour to him, *Treacher v. Hinton*, 4 B. & A. 413.

Notice to indorser necessary.

143. If the holder of a bill looks to the indorser for payment, it is incumbent on him to give notice of the dishonour of the bill, otherwise the indorser will not be liable, *Blezard v. Hirst*, 5 Burr. 2672; and if notice of the dishonour regularly circulate back to a distant indorser or to the drawer, he is liable either to his indorser or to the holder; thus, where the holder on the day of dishonour gave notice to the fifth indorser, and the fifth on the following day to the fourth, he on the day after to the third, the third on the next day to the second, and the second on the following day to the first, held, in an action by the second against the first, that due notice had been given, *Hilton v. Shepherd*, 6 East, 14, n.; so if the drawer of a bill receives due notice of its dishonour from any person who is a party to it, he is liable upon it to a subsequent indorser, although he had received no notice from him, *Jameson v. Swinton*, 2 Campb. 373; *S. C.* 2 Taunt. 373. Want of effects in the hands of the drawee does not in the case of an indorser, as in the case of the drawer, render notice of dishonour to the latter unnecessary, *Goodall v. Dolley*, 1 T. R. 712; *S. P. Wilkes v. Jacks*, 1 Peake, 202, 209; but this rule is applicable only to the case of fair transactions; therefore, where the

Where there are several indorsers.

indorser knows that the acceptor is insolvent at the time that he gives the indorsement, he is not entitled to notice, *De Berdt v. Atkinson*, 2 H. Bl. 336; but see *Smith v. Beckett*, 13 East, 187.

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Exchange.*

6. *Consequence of Neglect to give Notice.*

144. Want of due notice of dishonour discharges the drawer and indorser from all liability, whether on the bill or on the consideration for which the bill was paid, *Bridges v. Berry*, 3 Taunt. 130; and the want of notice is a complete defence to the action; and evidence tending to show that the defendant was not prejudiced thereby, is inadmissible, except in an action against the drawer who had no effects in the hands of the drawee, *Dennis v. Morrice*, 3 Esp. 158; *S. P. Hill v. Heap*, D. & R. N. P. C. 59. Where there are several indorsers to a bill, and one of them is guilty of *laches*, that discharges all antecedent parties, *Marsh v. Maxwell*, 2 Campb. 210, n.

Discharge of
drawer, &c.

7. *Excuse and Waiver of Notice.*

145. Death, or any dangerous accident rendering notice impossible, will excuse it, *Turner v. Leech*, Chitt. 213; so notice need not be given, if the bill is on an insufficient stamp, *Cundy v. Marriott*, 1 R. & Ad. 699; but destruction of the bill will be no excuse for neglect of notice, *Thackray v. Blakett*, 3 Campb. 164; nor the insolvency of the acceptor, *ib.*; *Dennis v. Morrice*, 3 Esp. 158; nor the fact of his having told the drawer that he would not pay the bill, *Baker v. Birch*, 3 Campb. 107; nor an agreement between the parties that the instrument shall not be payable till after a certain event, *Free v. Hawkins*, 8 Taunt. 92; *S. C.* 1 J. B. Moore, 535; *S. C.* Holt's N. P. C. 550. As to drawers not having effects in the drawee's hands, see *ante*, sect. 141.

Excusing no-
tice.

146. A subsequent promise by the indorser to pay is not a waiver of the objection for want of notice, if made in ignorance that he has been discharged by such neglect, *Blezard v. Hirst*, 5 Burr. 2670, recognized in *Goodall v. Dolley*, 1 T. R. 712; *Pickin v. Graham*, 1 Cr. & M. 728; *sed secus*, where a party has full knowledge of the circumstances, *Lundie v. Robertson*, 7 East, 231; recognized in *Jones v. Morgan*; and since the new rules, which do not affect the question, in *Croxton v. Morgan*, 5 M. & W. 5; and as to what is evidence of waiver of the objection, see *Hopley v. Dufresne*, 15 East, 275; but where an eleventh indorser, discharged by the *laches* of the holder, paid the bill in his own wrong, held that he could not recover from the defendant an eighth indorser, or any of the prior parties, who were also discharged, *Turner v. Leach*, 4 B. & A. 451.

Waiver of no-
tice.

*Bills of
Exchange.*

XI. PROTEST.

Definition of
protest.As to foreign
bills.As to inland
bills.Presentment of
foreign bills.

Noting.

Notice of pro-
test.Protest for
better security.In case of ac-
ceptance for
honour.

147. A protest is a minute of the non-acceptance or non-payment of a bill of exchange, drawn up by a notary public, and accompanied by a solemn declaration on the part of the holder against any loss to be sustained thereby; which by the law merchant in the case of foreign bills is an essential part of their constitution, but in regard to inland bills of a certain description and amount, has been rendered necessary only by the 9 & 10 Will. 3, c. 17; 3 & 4 Ann. c. 9, s. 4. These statutes do not apply to inland bills payable after sight, *Leftley v. Mills*, 4 T. R. 170; and the principal and interest are recoverable, although no protest has been made, even in the case of inland bills, to which the statutes apply, *Windle v. Andrews*, 2 B. & A. 696, recognizing *Lumley v. Palmer*, 2 Str. 1000.

148. Foreign as well as inland bills of exchange are usually presented for acceptance to the drawee by the holder or his agent; and if not accepted or paid, foreign bills are sent to a notary public, who, on the same day, again presents the bill, or causes it to be presented; and, in case of a second refusal, makes a minute, consisting of his initials, the day, month and year, and the reason, if assigned, for the refusal, which is termed *noting*, from which the notary may afterwards draw up a formal protest at his leisure, Bull. N. P. 272. The noting is, *per se*, of no legal effect, *Rogers v. Stephens*, 2 T. R. 713; but it is a necessary preliminary to protesting, *Leftley v. Mills*, *ub. sup.*; *Chaters v. Bell*, 4 Esp. 48. It is said in *Leftley v. Mills*, *ub. sup.*, that presentment ought to be made by the notary himself and not his clerk; but it seems to be otherwise in practice; and there is no decision on the point, Brooke on the Office of Notary, cited Selw. N. P. 338, n., 10th ed.

149. If the drawer reside abroad, it was at one time thought that a copy, or some memorial of the protest, ought to accompany the notice of dishonour, *Goosbery v. Mead*, Gilb. Ev. p. 79; Bull. N. P. 272; but this case was overruled in *Cromwell v. Hyinson*, 2 Esp. 511; and *Robins v. Gibson*, 3 Campb. 334; S. C. 1 M. & S. 288; both which cases are recognized in *Goodman v. Harvey*, 4 Ad. & Ell. 870; 6 Nev. & Man. 372.

150. Besides the protest for non-acceptance and non-payment, the holder may protest for better security; that is, where the acceptor becomes insolvent, or where his credit is openly impeached before the bill falls due, the holder causes a notary to demand better security; and, on refusal, gets the bill protested, and notice sent to an antecedent party; but he cannot bring any action until the bill falls due, *Marius*, 27; *Anon.* 1 Ld. Raym. 743.

151. Where a bill is either accepted or paid for honour, it must always be preceded by a protest, or the party to whose use money is

paid will not be liable to any action for its recovery, *Vandewall v. Tyrrell*, Mood. & Malk. 87.

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152. A bill is usually protested for non-acceptance or non-payment in the place where the dishonour occurred, see *Mitchell v. Baring*, 10 B. & C. 4; and by the 2 & 3 Will. 4, c. 98, where a bill is made payable at a place other than the drawee's residence, and is not accepted on presentment, it may, without further presentment, be protested in the place where it has been made payable.

Where protest should be made.

153. In an action against the drawer of a foreign bill payable after sight, a protest must be proved, *Gale v. Walsh*, 5 T. R. 239. Proof of the noting alone is not sufficient, *Rogers v. Stephens*, *ub. sup.*; and it must be averred as well as proved; but if the drawer had no effects, or probability of effects, in the hands of the drawee, such proof is excused, *Legge v. Thorp*, 12 East, 17; *S. C.* 2 Campb. 300; so if the drawer has admitted his liability by promising to pay, *Gibbon v. Coggan*, 2 Campb. 188, recognized in *Patterson v. Beecher*, 6 J. B. Moore, 319. To entitle the indorsee of an inland bill to recover interest from the drawer, it is not necessary to prove protest for non-payment, *Windle v. Andrews*, 2 B. & A. 696; but if protest be set out, it must be proved, *Bonlager v. Talleyrand*, 2 Esp. 550. In an action on a foreign bill, the dishonour will be proved by producing the notarial protest under seal; but such a protest is no evidence that a foreign bill has been presented for payment in England, *Chesmer v. Noyes*, 4 Campb. 129.

Proof of protest.

154. Protest of any bill of exchange or promissory note for any sum of money not amounting to 20*l.*, is, by 55 Geo. 3, c. 184, liable to a stamp duty of 2*s.*; amounting to 20*l.* and not to 100*l.*, 3*l.*; amounting to 100*l.* and not to 500*l.*, 5*s.*; amounting to 500*l.* or upwards, 10*s.*

Stamp on protest.

XII. REMEDY BY ACTION ON BILLS.

155. Payment of a bill may be enforced by a special action of *assumpsit*, the usual remedy; although, where there is a privity between the parties, as between the drawer and the acceptor or the payee, it may be by action of debt, *Priddy v. Henbrey*, 1 B. & C. 674; *S. C.* 3 D. & R. 165. It may be brought by different parties at the same time; but the court, even in the case of an acceptor, will, by a late rule of court, stay proceedings on payment of the debt and costs, R. T. 1 Vict.

Form of action.

156. Formerly the declaration extended to a great length; but by the new rules concise forms are given on bills and notes, also as to pleading under the new rules, see *Jervis's New Rules*, 4th ed.; *Wordsworth's New Rules*, 2nd ed.; *Selwin's N. P.* 10th ed.; so before the 9 Geo. 4, c. 15, nonsuits were very frequent, on the ground of variances between the instrument as set forth in the declaration,

Staying proceedings.

Effect of the new rules.

Of 9 Geo. 4, c. 15, as to variances.

<i>Bills of Exchange.</i>	and that produced in evidence, Selw. N. P.; so before the 3 & 4 Will. 4, c. 42, s. 12, it was not sufficient to state merely the initials of the Christian name of a defendant, although the initials only appeared on the bill, <i>Reynolds v. Hankin</i> , 4 B. & A. 537; overruling <i>Howell v. Colman</i> , 2 B. & P. 466.
Of 3 & 4 Will. 4, c. 41, as to initials.	
Defences to the action.	157. Where a party thinks proper to resist payment of a bill, he may rest his defence on a variety of grounds, as in the case of a bill being lost, stolen or destroyed.
In case of bill being lost, &c.	It is a good defence to an action on a bill that it was not produced or shown to be lost or destroyed, though the party promised to pay it, <i>Powell v. Roach</i> , 6 Esp. 76; and where the instrument is in such a state that it is transferable by delivery, and may therefore get into the hands of a <i>bonâ fide</i> holder, and for valuable consideration, the loser cannot, in that case, recover upon it, <i>Pierson v. Hutchinson</i> , 2 Campb. 211; <i>Mayor v. Johnson</i> , 3 Campb. 324; if, however, an acceptor pay one who derives his title through a forgery, that will not discharge him, <i>Esdaile v. Lanauze</i> , 1 Y. & Coll. 394; <i>Johnson v. Windle</i> , 3 Bing. N. C. 225.
In case of forgery.	In an action against the acceptor by an indorsee, it is no defence that the drawers, who were also the indorsers, were infants, <i>Taylor v. Croker</i> , 4 Esp. 187; or that the payee was an infant, <i>Grey v. Cooper</i> , 3 Doug. 65.
In case of infancy.	As a rule, payment cannot afford a defence, unless it be made to the holder and real proprietor of the bill; for payment to any other is no discharge to the acceptor, except in the case of a <i>bonâ fide</i> holder of a lost bill, <i>Pierson v. Hutchinson</i> , <i>ub. sup.</i>
Payment and satisfaction.	The Statute of Limitations is a good plea in equity as well as at law, and the statute begins to run on a bill or note not from the time the bill is drawn, but from the time it falls due, <i>Wintersheim v. Lady Carlisle</i> , 1 H. Bl. 631; unless the bill be payable at or after sight, in which case the statute begins to run from the time presentment is made, <i>Holmes v. Kerrison</i> , 2 Taunt. 323; or it be payable on demand, in which case the statute runs from the date of the instrument, and not from the time of the demand, <i>Christie v. Fonsick</i> , Selw. N. P. 352, 10th ed.; <i>sed aliter</i> if payable at a certain time, as one month after demand, <i>Thorpe v. Coombe</i> , Ry. & Mood. 388; see also <i>Norton v. Ellam</i> , 2 M. & W. 461.
Statute of Limitations.	

FORMS OF BILLS OF EXCHANGE.

No. CXCIH.

No. CXCIH.

Inland Bill.*Inland Bill.*

[Stamp]

London 1 January 18 .

£100

Two months after date (or "at sight" or "at
days after sight" or "on demand") pay to
Mr. C. D. (or "order" or "bearer" or "to me"
or "my order") one hundred pounds value re-
ceived

Accepted payable at
Messrs.
(special acceptance
across the bill)

A. B. (drawer)

To Mr. C. D. (drawee)
merchant in Bristol

Accepted C. D. (general acceptance at foot of bill)

Accepted C. D. payable at Messrs. (special acceptance
at foot of bill)

Indorsed A. B. [or "E. F." (first indorser)]

G. H. I. K. &c. (second, third, &c., indorsers)



No. CXCIV.

No. CXCIV.

Foreign Bill.*Foreign Bill (a).*

[Stamp]

London 1 January 18 .

Exchange for 10,000 livres Tournoises.

At two usances (or "at sight" or "at after sight" or
"at after date") pay this my first exchange (second and
third of the same tenor and date not paid) to Messrs. A. B. &
Co. or order (or "bearer") ten thousand livres Tournoises value
received of them and place the same to account as per advice
from

H. T.

To Messrs. C. D. & Co. in Paris
payable at

(a) Foreign bills are usually drawn in sets; that is, copies of the bill are made on separate pieces of paper, each part containing a condition that it shall continue payable only so long as the others remain unpaid. As between *bona fide* holder for value of different parts of the same bill, he who first obtains a title to his part is entitled to the other parts, *Perreira v. Jopps*, cited 10 B. & C. 449; *sed secus* where one party has taken another security as a substitute for his part, *Holdsworth v. Hunter*, 10 B. & C. 449.

No. CXCV.
Foreign Bill.

No. CXCV.
Bill on Venice.

London 16 February 18 .

Exchange for D.1000.

At usance pay this my first &c. exchange to Mr. D. P. (*or*
"to the procuration of Mr. D. P.") one thousand ducats banco
value of Mr. A. G. and place it to account as per advice from
J. W.

To Mr. merchant in Venice.



No. CXCVI.
Foreign Bill.

No. CXCVI.
Bill on Amsterdam.

London 10th April 18 .

Exchange for £173 : 15s. sterling at 35*sc.* 7*g.* per pound sterling.

At two usances and a half pay this my first (second &c. see
No. CXCVI.) to Mr. J. M. or order one hundred and seventy-
three pounds fifteen shillings sterling at thirty-five shillings seven
groots per pound sterling value of Mr. J. A. and place it to account
as per advice from

T. S.

To Mr. C. L. merchant in Amsterdam.



No. CXCVII.
Exchequer Bill.

No. CXCVII.
Exchequer Bill.

No. 8333. 12th May 18 .

By virtue of an act of parliament for raising the sum of
£ by exchequer bills for the service of the year 18 This
bill entitles A. B. or order to one thousand pounds with interest
after the rate of 2½*d.* *per centum per diem* payable out of the first
aids or supplies to be granted the next session of parliament and
this bill is to be current and pass in any of the public revenues
aids taxes or supplies or at the Receipt of Exchequer at West-
minster after the fifth day of April. Dated at the Exchequer the
12th day of May 18 .

If the blank is not filled up the bill will be paid to the bearer.
N. B. The checks must not be cut off.

(*Chancellor of the Exchequer.*)

FORMS RELATING TO NOTICES.

No. CXCVIII.

No. CXCVIII.

Non-acceptance.*Notice of Non-acceptance of a Bill.*

Sir

Take notice that I am the holder of the bill of exchange dated for payment of £ two months after date drawn on C. D. by and indorsed by you and that the same has been presented for acceptance to the said C. D. and he has refused to accept the same and I require you immediately to pay the amount with expenses.

Yours &c.

To Mr. A. B.

E. F.

Broad Street London.

No. CXCIX.

No. CXCIX.

Non-payment.*Notice of Non-payment of a Bill.*

Sir

Take notice that I am holder of a bill dated for payment of £ two months after date drawn on C. D. and indorsed by you and that the same has been presented for payment and dishonoured by the said C. D. and therefore I require you immediately to pay the same with expenses.

Yours &c.

To Mr.

Broad Street London.

E. F.

FORMS RELATING TO PROTEST OF BILLS.

No. CC.

No. CC.

*Notice of Protest (a) of an Inland Bill, pursuant to 8 & 9 Will. 3, c. 17.**Protest under 8 & 9 Will. 3.*

Sir

In pursuance of the statute in such case made and provided I give you notice that I am the holder of the bill of exchange dated and for the payment of £ two months after

(a) This notice is necessary where the party resides abroad.

No. CC.
Protest under
8 & 9 Will. 3.

date and drawn by you on C. D. and that the same was presented for payment on and not paid but dishonoured by the said C. D. and that I have caused the said bill to be duly protested and I request you immediately to pay me the amount of the said bill with expenses and interest.

Dated &c.

Yours &c.

To Mr. Antwerp.



No. CCI.
For
Non-acceptance.

No. CCI.

Protest of Foreign Bill for Non-acceptance.

(Copy bill and indorsements on first side of a sheet of paper, and on the next side proceed as follows.)

On this day at the request of A. B. bearer of the original bill of exchange whereof a true copy is on the other side written I A. B. of London notary public by royal authority duly admitted and sworn did exhibit the said bill to E. F. on whom the said bill of exchange was drawn for his acceptance thereof and requested him to accept the same which he refused to do declaring &c. (*here set out the reason of refusal, if material*) Wherefore I the said notary at the request aforesaid have protested and by these presents do solemnly protest as well against the drawer drawee and the indorsers of the said bill as all others whom it may concern for exchange re-exchange and all costs charges damages and interest suffered and to be suffered for want of acceptance of the said bill. Thus done and protested in London in the presence of G. H.

Witness G. H.

A. B. (L. S.)

Notary Public.

(Here subscribe the expenses of noting and protest.)



No. CCII.
For
Non-acceptance.

No. CCII.

Protest of a Bill drawn upon a Person not to be found, and not particularly addressed.

On this day of in the year at the request of Mr. C. D. bearer of the original bill of exchange whereof a true copy is on the other side written I A. B. of notary public

&c. went to the General Post-office London and to the Bank of England and on the Royal Exchange and made diligent inquiries for and after the said Mr. J. G. on whom the bill is drawn and I have not been able to find the said Mr. J. G. or discover or ascertain where he is to be found and no person at either of the said places hath informed or been able to inform me where the said J. G. resides and the said J. G. and his residence are wholly unknown to the said C. D. and to me and any other person who could give information respecting the said J. G. or of any other person who would accept (*as the case may be*) the said bill of exchange for honour or on account of the said J. G. or of any other party to the said bill Whereupon &c. (*proceed as in the last form.*)

No. CCII.
For
Non-acceptance.

No. CCIII.

Counter-protest by reason of Bankruptcy.

No. CCIII.
Counter-protest.

On this day of in the year before me J. M. of the City of London notary public &c. personally came and appeared Mr. C. D. of and produced unto me the original bill of exchange copy whereof is on the other side written and the protest for nonacceptance bearing date the day of now last past by N. O. notary public And whereas Messrs. L. and M. the drawers of the said bill of exchange by the London Gazette bearing date the day of instant are declared bankrupts in pursuance of a fiat of bankruptcy under the great seal of Great Britain and by means thereof they are incapable of making satisfaction or payment of the said bill Therefore I the said notary at the request of the said Mr. C. D. have counter-protested and by these presents do most solemnly counter-protest as well against the said drawer of the said bill as against all others whom it doth or may concern for exchanges re-exchanges and all costs charges damages and interest suffered and to be suffered for want of acceptance to the said bill Thus done and counter-protested in London aforesaid in the presence of O. P. and Q. B. witnesses hereunto required.

No. CCIV.

*Common Form
of Protest, and
Act of Honour
thereon.*

No. CCIV.

*Common Form of Protest of Foreign Bill for Non-acceptance,
and Act of Honour thereon.*

On this day of in the year at the request of
Mr. A. B. of bearer of the original bill of exchange whereof
a true copy is on the other side written I R. M. of the said city
notary public by royal authority duly admitted and sworn went to
the house of Mr. C. D. on whom the said bill is drawn and there
speaking with a clerk in the counting-house I produced and ex-
hibited unto him the original bill of exchange and demanded
acceptance thereof to which he answered that &c. (*here set out
the answer*) which answer not being satisfactory I the said notary
at the request aforesaid have protested and by these presents do
solemnly protest as well against the drawer of the said bill of
exchange as against all others whom it may or doth concern for
exchange re-exchange damages costs charges and interest suf-
fered or to be suffered for want of acceptance of the said bill of
exchange Thus done in the presence of E. T. and G. H. wit-
nesses hereunto required.

R. M. (L.S.)

Notary Public.

Act of honour
thereon.

Afterwards on the same day month and year before me the
said notary and witnesses personally came and appeared Mr.
J. K. of this city merchant who declared he was ready and would
accept the said bill of exchange now under protest for the honour
and account of Mr. G. N. the drawer (*or "indorser &c." as the
case may be*) holding him the said drawer thereof and all others
concerned always obliged to him the said appearer for reimburse-
ment in due form of law.



No. CCV.

*Protest for
Non-payment.*

No. CCV.

Protest of Foreign Bill for Non-payment.

On this day of in the year at the request of
G. C. bearer of the original bill of exchange whereof a true copy is
on the other side written I R. L. of London notary public by royal
authority duly admitted and sworn did exhibit the said bill to
E. F. on whom the bill was drawn at his counting-house situate
and demanded payment thereof which he refused

Whereupon I the said notary at the request aforesaid have protested and by these presents do solemnly protest as well against the drawer as against the drawee and indorsers of the said bill and all others whom it may concern for exchange re-exchange and all costs charges damages and interest suffered or to be suffered for want of payment of the said sum of £ so due on the said bill of exchange as aforesaid Thus done &c. (*see last precedent.*)

No. CCV.

*Protest for
Non-payment.*

No. CCVI.

Protest when the Acceptor pays Part only.

No. CCVI.

*Non-payment
of Part.*

On this day of year at the request of A. B. &c. and bearer of the original bill of exchange whereof a true copy is on the other side written I R. C. of &c. went to the house of G. B. by whom the said bill was accepted and demanded payment thereof whereunto he answered that he would only pay £ part of the said bill alleging that he the said G. B. had no more effects of the drawer thereof in his hands which said sum of £ the said A. B. the holder of the said bill accepted and did receive the same and requested me the said notary to protest for the remaining sum of £ due on the said bill of exchange Whereupon I the said notary at the request aforesaid have protested and by these presents do solemnly protest as well against the drawer of the said bill as all others whom it may or doth concern for the remaining sum of £ so due on the said bill for exchange re-exchange and all costs charges damages interest and expenses suffered and to be suffered for want of payment of the sum of £ so remaining due on the said bill as aforesaid Thus done &c.

*Act of Honour thereupon for the remaining Sum due on
the above Bill.*

Afterwards on the day month and year first above-written before me the said notary and witnesses personally came and appeared Mr. E. L. of who declared that he would pay the remaining sum of £ left due and unpaid on the said bill now under protest for the honour and on account of F. L. the indorser thereof holding him the said F. L. and all others concerned always obliged to him the said appearer for reimbursement in due form of law.

*Act of honour
thereupon.*

No. CCVII.

*For better
Security.*

No. CCVII.

*Protest of a Bill, when the Acceptor becomes a Bankrupt, for
better Security.*

On this day of at the request of C. O. of the city
&c. and bearer &c. (*see last precedent*) I J. M. of &c. notary &c.
having perused and read the London Gazette bearing date the &c.
instant found that C. D. the acceptor of the said bill of exchange
was therein declared a bankrupt in consequence whereof I the
said notary went to the dwelling-house of the said C. D. and
there speaking with a clerk I demanded security for the due pay-
ment of the said bill of exchange when the same shall become
payable when the said clerk answered that the said C. D. was a
bankrupt and had given no directions respecting the said bill
Whereupon I the said notary at the request aforesaid have pro-
tested and by these presents do solemnly protest as well against
the drawer and acceptor of the said bill as against all others it
may or doth concern for exchanges re-exchanges damages costs
charges and interest suffered or to be suffered for want of better
security for payment of the said bill of exchange when due and
payable Thus done &c.



No. CCVIII.

*Protest under
9 & 10 Will. 3.*

No. CCVIII.

*Protest of Inland Bill for Non-payment as prescribed by 8 & 9
Will. 3, c. 17.**(Write above the protest an exact copy of the inland bill, and then
proceed as follows.)*

Know all men that I A. B. on the day of at the
usual place of abode of the said C. D. have demanded payment
of the bill of exchange of which the above is a copy which the
said C. D. did not pay therefore I the said A. B. do hereby pro-
test the said bill. Dated this : day of

A. B. (L.S.)

Notary Public.



No. CCIX.

Certificate of a Duplicate Protest.

No. CCIX.

*Certificate of a
Duplicate
Protest.*

I J. M. of London notary public &c. do hereby certify that the above written is a duplicate or true copy of a certain instrument of protest made before me and taken and subscribed from my registry of all material acts by and before me done in book marked in folio .

In witness whereof I hereby set my hand this day of
J. M.
Notary Public.

No. CCX.

Certificate of the Signature of the Chief Magistrate.

No. CCX.

*Signature of
Chief
Magistrate.*

I J. M. of &c. notary public &c. do hereby certify and declare that the signature A. B. mayor at the foot of the foregoing affidavit is of the own proper handwriting of the Right Honorable A. B. lord mayor of this city in whose presence oath was duly administered in due form of law to Mr. C. D. the deponent named in the said affidavit and who signed the same in his presence therefore full faith and credit ought to be given thereto in court and thereout London this day of .

Witness my hand, J. M.
Notary Public.

No. CCXI.

Attestation of intimating and delivering an authentic Copy of Protest.

No. CCXI.

*Attestation of
Protest.*

Afterwards on the day of the said month of I the said notary at the request of the said A. B. and C. D. did intimate the foregoing protest to the within-named E. F. and then and there speaking to the said E. F. I delivered to him an authentic copy thereof which he took and said (*here set out answer*) which answer not being satisfactory to the said requestants I the said notary did and do persist to protest in manner and form aforesaid.

No. CCXII.

Affidavit.

No. CCXII.

Affidavit of the Truth of a Protest.

A. B. master C. D. first mate and E. F. second mate (*as the case may be*) of the ship or vessel called the being severally duly sworn upon the Holy Evangelists of Almighty God do severally make oath and say that the instrument of protest hereunto annexed hath been clearly and distinctly read over to them these deponents and that the several matters and things therein contained are right and true in all respects as the same are therein particularly alleged declared and set forth.

II. PROMISSORY NOTES.

- | | |
|--|---|
| 1. <i>Definition of a Promissory Note.</i>
Not valid at Common Law.
But valid under 3 & 4 Ann. | <i>Promise to pay Money.</i> |
| 2. <i>Distinction between Notes and Bills.</i> | 13. <i>Joint and several.</i> |
| 3. <i>Different Kinds of Promissory Notes.</i>
Bank Notes.
Bankers' Notes. | 14. <i>Payable to Order or Bearer.</i>
on Demand. |
| 4. <i>Particular Qualities of Promissory Notes.</i> | 15. <i>Payable at or after Sight.</i> |
| 1. <i>Parties.</i> | 16. <i>Place where payable.</i> |
| 5. <i>Who they are.</i> | 17. <i>Sum payable.</i> |
| 6. <i>Capacity, &c. of contracting Parties.</i>
Feme Covert. | 18. <i>Maker's Signature.</i> |
| 7. <i>Corporations.</i> | 3. <i>Acceptance and Indorsement.</i> |
| 8. <i>Agents, &c.</i> | 19. <i>No Acceptance.</i> |
| 9. <i>Liability of Maker.</i>
of Indorser. | Indorsement as of Bills. |
| 2. <i>Form of Promissory Note.</i> | 4. <i>Stamp.</i> |
| 10. <i>Date of Place.</i>
Date as to Time. | 20. <i>How Notes are affected by the Stamp Acts.</i> |
| 11. <i>Time when payable.</i> | 5. <i>Consideration.</i> |
| 12. <i>Promise to pay.</i> | 21. <i>Good Consideration presumed.</i>
Failure, &c. of Consideration. |
| | 6. <i>Transfer.</i> |
| | 22. <i>By Indorsement.</i>
Foreign Notes transferable. |
| | 23. <i>Transfer by Delivery.</i> |
| | 24. <i>Bank Notes how transferable.</i>
Bankers' Notes how transferable. |

<p>7. <i>Payment.</i></p> <p>25. <i>Days of Grace.</i></p>	<p>9. <i>Notice of Dishonour.</i></p> <p>27. <i>What is Notice of Dishonour.</i></p>	<p><i>Promissory Notes.</i></p>
<p>8. <i>Presentment.</i></p> <p>26. <i>Presentment necessary for what Purpose.</i></p> <p><i>What not Laches.</i></p>	<p>10. <i>Remedy on Promissory Notes.</i></p> <p>28. <i>Form of Action.</i></p> <p><i>Payment of Interest.</i></p> <p><i>Statute of Limitations, &c.</i></p>	

SECT. 1. A promissory note, or, as it is vulgarly called, a note of hand, is an engagement to pay a sum of money at a certain time, or on demand, or at sight, to a person therein named. Promissory notes were held not to be valid instruments at common law, because the 3 & 4 Ann. c. 9, has put them on the same footing as bills, *Brown v. Harraden*, 4 T. R. 151.

Definition of a promissory note.
Not valid at common law, but valid under 3 & 4 Ann.

2. A promissory note in its original shape of a promise from one man to pay another, bears no resemblance to a bill of exchange; it is only when it is transferred that the resemblance commences, "it being then an order by the indorser upon the maker of the note (his debtor by the note) to pay to the indorsee, which is the definition of a bill of exchange," *per* Lord Mansfield, *Heylin v. Adamson*, 2 Burr. 675. The point of resemblance being thus fixed, it will be easy to see how far the law relating to bills of exchange is applicable to promissory notes.

Distinction between notes and bills.

3. Promissory notes are of three kinds, namely, such as are given from one individual or firm to another; those which are issued by the Bank of England, which are called Bank Notes; and those which are issued by bankers, particularly in the country, which are called bankers' cash notes, formerly Goldsmiths' Notes, *Buller v. Crisp*, 6 Mod. 29; *Nicholson v. Sedgwick*, 1 Lord Raym. 180; *S. C.* 3 Salk. 67. Bank notes are not, like bills of exchange, mere securities or documents for debts, but are treated as money, *Miller v. Race*, 1 Burr. 457; they may be described as money in the memorial of an annuity deed, *Wright v. Reed*, 3 T. R. 554; and pass as cash or property bequeathed by will, *Fleming v. Brook*, 1 Schoales & Lef. 318; but before the 1 & 2 Vict. c. 110, they could not be taken in execution as goods, *Francis v. Nash*, Rep. Temp. Hardw. 53. Bankers' notes are considered money or cash when expressly received as such, *Pickard v. Bankes*, 13 East, 20; *Spratt v. Hobhouse*, 12 J. B. Moore, 402; but not when taken generally on account of a debt, if, on being duly presented for payment, they be dishonoured, *Ward v. Evans*, 2 Lord Raym. 928; *S. C.* 2 Salk. 442; Holt, 120; 6 Mod. 36; 1 Com. 138. The issue of these two last kinds of notes are regulated by statutory provisions.

Different kinds of promissory notes.

Bank notes.

Bankers' notes.

4. The properties of promissory notes, both as they resemble and as they differ from bills of exchange, may be considered under the fol-

Particular qualities of promissory notes.

*Promissory
Notes.*

lowing heads; as to 1, Parties; 2, Form of the note; 3, The stamp; 4, The transfer; 5, Presentment; 6, Payment; 7, Notice.

1. *Parties.*

Who they are.

5. The maker of a note answers to the acceptor of a bill, the indorser of a note answers either to the drawer or indorser of a bill, and the payee of a note is the payee or indorsee of a bill.

Capacity, &c.
of contracting
parties.

Feme covert.

6. The rules as to the incapacity, the rights, and the liabilities of parties to bills already mentioned, see *ante*, Pref. BILLS OF EXCHANGE, sect. 5 *et seq.*, apply also to promissory notes. A note payable to a *feme sole* becomes after marriage the property of her husband, *Connor v. Martin*, cited 3 Wils. 5; and the interest passes by the indorsement of the husband alone, *Mason v. Morgan*, 2 Ad. & Ell. 30; 4 Nev. & Man. 76; but if the husband die before he has reduced it to possession, the right survives to the wife, *Gaters v. Maddeley*, 6 M. & W. 423.

Corporations.

7. As to corporations, it seems doubtful whether a local act, enabling a corporation to issue promissory notes under their common seal, will enable them to make a promise, and subject them to an action of assumpsit as incident to the making a note, *Slack v. Highgate Archway Company*, 5 Taunt. 792. In regard to bills of exchange assumpsit will lie in that case, *Murray v. East India Company*, 5 B. & A. 204.

Agents, &c.

8. As to agents the construction put upon 3 & 4 Anne, c. 9, s. 1, is, that the cases therein enumerated, in which promissory notes signed by an agent are made assignable, are instances only, *Dickenson v. Teague*, 4 Tyrw. 450. But if a man makes a note, and signs his name in a character in which he cannot bind himself, he becomes personally liable; therefore where two makers of a promissory note gave it to a creditor of their testator, whereby "as executors they severally and jointly promised to pay on demand, with interest," they were held personally liable, *Childs v. Monins*, 2 B. & B. 460; *S. C.* 5 J. B. Moore, 282; see also *Ridout v. Bristow*, 1 Crompt. & J. 231; *S. C.* 1 Tyrw. 90; so if parish officers make a note, and sign themselves "as churchwardens and overseers," a character in which they cannot bind themselves, they contract as individuals, *Rew v. Petit*, 1 Ad. & Ell. 196; *S. C.* nom. *Crew v. Petit*, 3 Nev. & Man. 456. As to joint and several notes, see *infra*.

Liability of
maker.

9. The maker of a note, like the acceptor of a bill, is the principal debtor, though it be given by the maker to the payee without consideration, *Carstairs v. Rolleston*, 5 Taunt. 551; *S. C.* 1 Marsh. 257; and the holder take it with notice of the absence of consideration, *Nichols v. Norris*, 3 B. & Ad. 41; and although the holder of a joint and several note of A. and B., by discharging A., discharges also B., *Nicholson v. Revell*, 4 Ad. & Ell. 675; *S. C.* 6 Nev. & Man.

192; yet it appears that where time is given to one maker, it will not relieve the other, *Clarke v. Wilson*, 3 M. & W. 208; and it seems doubtful whether evidence is admissible to show that one is principal and the other surety, and consequently that the surety is discharged by time given to the principal, *Price v. Edmunds*, 10 B. & C. 578. The liability of the maker of a note given to secure the debt of a third person is the same as that of a party who gives a guarantee, *Stone v. Compton*, 1 Arn. 436.

Promissory
Notes.

The maker of a note, like the acceptor of a bill, is bound to pay on the day the instrument falls due, 5 Taunt. 240; *Soward v. Palmer*, 8 Taunt. 277; *S. C.* 2 J. B. Moore, 274; but an indorser has a reasonable time within which to pay the bill or note, *Walker v. Barnes*, 5 Taunt. 240.

Indorser.

2. Form of Promissory Notes.

10. The observations as to the place at which a bill is dated, see *ante*, Pref. BILLS (EXCHANGE), sect. 30, 31, are applicable to a note, except so far as notes issued by banking companies are restricted in this particular by the 3 & 4 Will. 4, c. 98; and the same may be said of the date of a note, except that the dates of notes payable to bearer on demand must not, by 55 Geo. 3, c. 184, s. 18, be printed under a penalty of 50*l.*; so as to the sum superscribed in figures, see *ante*, Pref. BILLS, sect. 32.

Date of place.

Date as to time.

11. As to the time when a note is made payable, it must not, as in the case of a bill, be made to depend upon the happening of any contingency; therefore a note made for the payment of a sum, the price of certain goods, upon condition "that, if any dispute should arise respecting the goods, the note should be void," *Hartley v. Wilkinson*, 4 M. & S. 25; or "provided the terms mentioned in certain letters shall be complied with," *Kingston v. Long*, 4 Dougl. 9, is not a valid instrument either as a bill or note; so, as a rule, if the sum specified is not payable at all events, *Clarke v. Percival*, 3 B. & A. 660; therefore if the money is to be paid out of a specified fund, which may never be realized, as a note promising to pay on the death of G. H., if he leaves either of us sufficient, is bad, *Roberts v. Peake*, 1 Burr. 323; or a note promising to pay "on the sale or produce when sold of an inn," *Hill v. Halford*, in error, 2 B. & P. 413; so an order or promise to pay "in good East India bonds, &c." is neither a bill or a note, B. N. P. 272; *R. v. Wilcox*, Bayl. Bills, 8, 5th ed.; so a note promising to pay a sum of £ , and also all other sums which may be due, is too indefinite, *Smith v. Nightingale*, 2 Stark. 375; but the contingency to vitiate the bill or note must be apparent upon the face of it, *Richards v. Richards*, 2 B. & Ad. 447.

Time when
payable.

Promissory
Notes.

Promise to pay.

12. No particular form of words is necessary to constitute a valid promissory note; neither the word "promise" nor the word "pay" is indispensable, it is sufficient if a promise can be implied; therefore "I promise to account with S.," *Morrice* (or *Morris*) v. *Lee*, 8 Mod. 362; "I acknowledge myself to be indebted to a A. in £ , to be paid on demand," *Casborne v. Dutton*, Selw. N. P. 380, n. 10th ed., have been held to be good promissory notes; see also *Chadwick v. Allen*, 1 Stra. 706; *Green v. Davis*, 4 B. & C. 235; but a note acknowledging only the receipt of drafts or checks, and promising to repay the amount, is not a good note, because as the drafts might not be paid, the note was held to be contingent, *Williamson v. Bennett*, 2 Campb. 417; and a common I. O. U. is not valid as a promissory note, although receivable in evidence under an account stated, without a stamp, *Fisher v. Leslie*, 1 Esp. 426; *Israel v. Israel*, 1 Campb. 175; but a promissory note to pay a sum six weeks after the death of the maker's father, was held good, because the payment was not contingent, although the time was uncertain, *Colehan v. Cook*, 2 Str. 1202; *S. C.* affirmed in error, Willes, 393. So a note given to an infant, payable when he should come of age, specifying the particular day, was held to be good, *Goss v. Nelson*, 1 Burr. 226; *S. C.* 1 Keny. 498. So it must be a promise to pay money; therefore held, that a note "to deliver up horses and a wharf" and pay money at a particular day, could not be declared on as a note within the statute, *Martin v. Chauntry*, 2 Str. 1271.

Promise to pay
money.

Joint and
several.

13. A note beginning "I promise to pay," and signed by two or more persons, is several as well as joint, *March v. Ward*, 1 Peake, 130; but if a promissory note appears on the face of it to be the separate note of A. only, it cannot be declared on as the joint note of A. and B., though given to secure a joint debt, *Siffkin v. Walker*, 2 Campb. 308; see also *Emly v. Lye*, 15 East, 7; but where, in an action by A. against B., it was stated in the declaration that B. and another jointly or severally promised to pay, this was held to be the same as jointly and severally, and that both promised that they or one of them should pay, consequently it was a joint and several note, *Rees v. Abbott*, Cowp. 832. So, although a note begin with the words "I promise to pay," yet if it be signed by the maker for himself and his partner, the note is several against the party signing, and joint against the firm, *Hall v. Smith*, 1 B. & C. 407.

Payable to order
or bearer.

14. A bill or note payable to the order of a person, is payable to himself, *Smith v. M'Clure*, 5 East, 476; *S. C.* 2 Smith, 43; and a note made payable to A. only, without the words "to order," or "to bearer," is held to be a good promissory note within the statute of Anne, *Smith v. Kendall*, 6 T. R. 123, recognizing *Anon.* 2 Ld. Raym. 1545, and also *Marius*. A note payable to bearer generally, is in law payable on demand, *Whitlock v. Underwood*, 2 B. & C. 157;

S. C. 3 D. & R. 355; but a note payable on demand, with interest until paid, is not to be considered as payable immediately, *Gascoyne v. Smith*, *M'Clel. & Y. 338*; see also *Norton v. Ellam*, *2 M. & W. 461*; *S. C. 1 Jur. 433*. *Promissory Notes.*
On demand.

15. The words "after sight" mean, on a bill, after acceptance; but, on a note, the expression imports being again exhibited to the maker, as a note is incapable of acceptance, *Sutton v. Toomer*, *7 B. & C. 416*; see also *Dixon v. Nuttall*, *1 Cr. M. & R. 307*; *S. C. 4 Tyrw. 1013*. Payable at or after sight.

16. The 1 & 2 Geo. 4, c. 78, which regulates the form of bills in this respect, is not applicable to notes; therefore if the maker of a note wishes to qualify his liability by fixing the place where the same shall be payable, he must insert words to that effect in the body of the note, *Sanderson v. Boves*, *14 East, 500*; recognized in *Dichenson v. Boves*, *16 East, 110*; but where, by a memorandum at the foot of a note, it is made payable at a particular place, that is not sufficient, such a memorandum not forming a part of the contract, *Exon v. Russell*, *4 M. & S. 505*; recognized in *Williams v. Waring*, *10 B. & C. 2*. Place where payable.

17. As to the sum mentioned in the instrument to be payable, and as to the insertion of the words "value received," *ante*, *BILLS*, sects. 41 and 43. Sum payable, &c.

18. The maker's signature, like that of the drawer of a bill, may be in any form or place of the instrument; but where a note begins with the words "I promise to pay," but the maker signs in his own name for others his partners, this binds the partnership, *Galway (Lord) v. Matther*, *10 East, 264*; *S. C. 1 Campb. 403*; and so where a note signed by two parties begins in this manner, this has been held to be joint and several, *Clerk v. Blackstock*, *Holt, N.P.C. 474*; *S. P. Marsh v. Ward*, *1 Peake, 130*; but where such a note is signed in the alternative, as "J. S. or else J. G.," this has been held not to be the promissory note of J. G. within the statute, *Ferris v. Bond*, *4 B. & A. 679*; and where a person signed a note on the representation that others were to join, and one of the parties afterwards refused to sign, held that the payee could not recover against the party that signed, unless the jury were satisfied that the person signing was cognizant of the fact of refusal, *Leaf v. Gibbs*, *4 C. & P. 466*. Maker's signature.

3. Acceptance and Indorsement.

19. Acceptance forms no part of a promissory note, but indorsement does, the form of which is subject to the same remarks as have been made on that in respect of bills: an indorsement written on a blank note will afterwards bind the indorser for any sum or time of payment which the person to whom he intrusts the note chooses to insert in it, *Russell v. Langstaffe*, *2 Dougl. 614*. No acceptance.
Indorsement as of bills.

Promissory
Notes.

How notes are
affected by the
Stamp Acts.

4. Stamp.

20. Promissory notes are affected by the Stamp Acts in three ways; 1. As to what amounts to a promissory note so as to require a stamp; 2. The amount of the stamp necessary when the instrument is made payable after date, after sight, or to bearer on demand; 3. What alteration of the instrument will render a new stamp necessary or otherwise, as by the addition of the words "joint and severally," held, that this being a material alteration, a new stamp was necessary, *Perring v. Hone*, 2 C. & P. 401; *S. C.* 4 Bing. 28; *S. C.* 12 J. B. Moore, 135; or by the addition of the name of a party as a surety, *Clerk v. Blackstock*, Holt, N. P. C. 474; unless made with the consent of all the parties, *Catton v. Simpson*, 8 Ad. & Ell. 136; *S. C.* 3 Nev. & P. 248.

5. Consideration.

Good considera-
tion presumed.

Failure, &c. of
consideration.

21. That a note has been given for a good consideration will be presumed until the contrary appears, in the same manner as in the case of a bill. Where a note has been given under such circumstances that the payee cannot recover on it, the indorsee must prove that he became so for a valuable consideration, *Heath v. Sansom*, 2 B. & Ad. 297. If a party sign his name upon a blank paper, and transmit it to another with a parol authority to draw a note to a certain amount, an indorsee without proof of consideration cannot recover on the note if drawn to a larger amount than was warranted, *Rowlands v. Evans*, 4 Jur. 460. For cases where there has been a failure or illegality of consideration, see *Jackson v. Warwick*, 7 T. R. 121; *Mann v. Lent*, 10 B. & C. 877; *Obbard v. Betham*, M. & M. 483; *Blogg v. Pinkers*, 1 Ry. & Moo. 125; *Bassett v. Dodgin*, 10 Bing. 43.

6. Transfer.

By indorse-
ment.

22. The transfer of notes as of bills may be either by indorsement or by delivery, and indorsements may be either in blank or in full, &c. An indorsement written on a note with a black lead pencil instead of ink, is a writing in law, and gives the indorsee a right to recover on it, *Geary v. Physic*, 5 B. & C. 234; *S. C.* 7 D. & R. 653. An indorsement of a note by a man's representative is good, *Watkins v. Maule*, 2 J. & W. 243. In an action against the maker of a note payable to A. B. or bearer, if the declaration state that A. B. indorsed it to plaintiff, this indorsement must be proved, *Waynam v. Bend*, 1 Campb. 175; a promissory note being evidence under the money counts only as between the original parties to it, *ib.* A bill payable to the order of drawer, and by him delivered to the plaintiff cannot be treated as a promissory note drawn in favour of the plaintiff, but an indorsement must be averred as well as delivery, *Prevôt v. Abbott*, 5 Taunt. 786; but a foreign note is transferable in England by in-

Foreign notes
transferable.

dorsement, the Statute of Anne extending to all promissory notes, *Milne v. Graham*, 1 B. & C. 192; *Bentley v. Northhouse*, 1 M. & M. 66. See further as to the law relating to the indorsement of bills, which is also applicable to notes, *ante*, BILLS, sects. 55 to 59.

Promissory
Notes.

23. A promissory note given as a security for a debt passes to the crown by act and operation of law, upon an inquisition before the coroner and a verdict of *felo de se* upon the body of the payee and holder, *Lambe v. Taylor*, 4 B. & C. 138; *S. C.* 6 D. & Ry. 188. So it passes by grant from the crown under the sign manual without indorsement, *ib.* So where deposited with a banker as a security, *Bruce v. Hurley*, 1 Stark. 23. See further as to the law of transfer by delivery in the case of bills, which is applicable to notes, *ante*, BILLS, sects. 95 and 96.

Transfer by
delivery.

24. Bank of England notes are negotiable abroad as well as in this country, so that the transferee may sue thereon in his own name, *De la Chaumette v. Bank (England)*, 2 B. & Ad. 385; and, being made payable to bearer, are transferable by mere delivery, and cannot be followed by a party, who has lost or been cheated or robbed of them, into the hands of a *bonâ fide* holder, unless taken under circumstances calculated to excite suspicion, *Lowndes v. Anderson*, 13 East, 130; and see also *Miller v. Race*, 1 Burr. 432; *Grant v. Vaughan*, 3 Burr. 1516; *Peacock v. Rhodes*, 2 Dougl. 633, *Solomons v. Bank (England)*, cited 13 East, 135, n.; *Snow v. Peacock*, 11 J. B. Moore, 486; *Strange v. Wigney*, 6 Binn. 677.

Bank notes how
transferable.

Bankers' notes, being commonly made payable to bearer on demand at the country bank or in London, are also transferable by delivery like other instruments which are so made payable.

Bankers' notes
how transfer-
able.

7. Payment.

25. Three days grace are allowed in the case of notes as of bills, *Brown v. Harraden*, 4 T. R.; and in a declaration on a note payable on demand, it is not necessary to allege a demand, *Rumball v. Ball*, 10 Mod. 38; *sed aliter*, as it seems, if the note be payable two months after demand, *Christie v. Fonsick*, Selw. N. P. 352, 10th ed. As to the law respecting the payment of bills, which is also applicable to the payment of notes, see *ante*, BILLS, sects. 113 to 119.

Days of grace.

8. Presentment.

26. Presentment of notes is only for payment, and not for acceptance as in the case of bills. There must be a demand on the maker of a note for payment before the indorser can be charged, *Collins v. Butler*, 2 Stra. 1087; and the note must be presented within reasonable time, *Darbyshire v. Parker*, 6 East, 3; so upon a note payable on demand or "at sight," an action cannot be maintained until after presentment, *Dixon v. Nuttall*, 1 Cr. M. & R. 307; *S. C.* 4 Tyrw. 1013; and if a particular place be mentioned in the body of a note, a

Presentment
necessary for
what purpose.

*Promissory
Notes.*

What not
laches.

presentment there is necessary to charge even the makér, *Sanderson v. Boves*, 14 East, 500; and a demand there is a demand on the maker, *Saunderson v. Judge*, 2 H. Bl. 509; but the holder of a banker's note payable at two places has the right to present it at either, and if payment be refused at one, held that there is no *laches* if it be proved that if payment had been demanded at the other, which was more convenient, the note would have been paid, *Beeching v. Gover*, Holt, N. P. C. 313; so where a servant received on behalf of his master, in payment of goods sold, country bank notes on Friday afternoon, and paid them to his master after banking hours on Saturday, held that there was no *laches* in not presenting them before the stopping of the bank on the Saturday, *James v. Holditch*, 8 D. & R. 40; see *Williams v. Smith*, 2 B. & A. 496; also further as to the consequence of not presenting in time, and other matters in which the law is the same for notes as for bills; as to making a note payable at a particular place, see *ante*, sect. 16.

9. *Notice of Dishonour.*

What is notice
of dishonour.

27. Notice of dishonour as to notes relates solely to non-payment, and not to non-acceptance or protest, as in the case of bills. Indorser of a note is not obliged to give notice of dishonour when there are no effects in the maker's hands, *Corney v. Mendez de Costa*, 1 Esp. 302; so in an action on a note payable at a banker's, held that it was not necessary to prove notice to the maker, *Pearce v. Pemberthey*, 3 Campb. 261; see also *Reynolds v. Davies*, in error, 1 B. & P. 625; and as to what have been deemed sufficient notice of dishonour, see *Hedger v. Steaven*, 2 M. & W. 799; *Smith v. Boulton*, 1 H. & W. 3; *Edmonds v. Cates*, 2 Jur. 183; and not sufficient, *Strange v. Price*, 10 Ad. & Ell. 125; *S. C.* 2 P. & D. 278; 3 Jur. 361. Where a note is in the hands of an indorsee, and he demands payment thereof from the maker, who neglects or omits to pay the same, notice of such refusal or default ought to be given by the indorsee himself to the prior indorsee or indorsees (if more than one), otherwise they will be discharged, *Anderson v. George*, Selw. N. P. 389, 10th ed.

10. *Remedy on Promissory Notes.*

Form of action

Payment of
interest.

Statute of Limi-
tations, &c.

28. The usual remedy on a promissory note, as on a bill, is an action of *assumpsit*, *Mainwaring v. Newman*, 2 B. & P. 120; for which the new rules have provided concise forms. Interest is given upon a note of hand from the time of its becoming payable, *Lithgow v. Lyon*, 1 Coop. 22; if the note be payable on demand, interest runs not from the date of the instrument, but from the time of the demand, *Barrough v. White*, 4 B. & C. 327. As to the Statute of Limitations in respect to notes payable on demand, that begins to run commonly from the date of the note, *Christie v. Fonsick*, Selw. N. P. C. 352,

10th ed.; but where the note was payable two years after demand, held that the statute did not begin to run until two years after demand of payment had been made, *Thorpe v. Booth*, 1 Ry. & Moo. 388; *S. C. nom. Thorpe v. Combe*, 8 D. & R. 347; see further as to staying proceedings and defences to the action, *ante*, **BILLS**, sect. 157.

*Promissory
Notes.*

—◆—
No. CCXIII.

Common Form of a Promissory Note.

No. CCXIII.

*Form of
Promissory
Note.*

[Stamp (a)]

London (b) 1 January 1844.

£100

Two months after date (b) I promise to pay (c) to C. D. or order (d) [at Messrs. A. B. & Co. bankers Lombard Street (e)] the sum of one hundred pounds value received (f)

A. B. (*maker*) (g)

Payable at Messrs. A. B. & Co. (h)

Indorsed (i) E. F. (*first indorser*)

G. H. (*second indorser*)

-
- (a) As to the stamp duty on promissory notes, see *ante*, sect. 20.
 (b) As to the date of place and time, see *ante*, sect. 10, 11.
 (c) As to the effect of these words, see *ante*, sect. 12.
 (d) As to the effect of these words, see *ante*, sect. 14, 15, *et seq.*
 (e) Effect of inserting the place of payment in the body of the note, see *ante*, sect. 16.
 (f) As to these words, see *ante*, sect. 17; and as to the consideration, sect. 21.
 (g) Effect of the maker's signature, see *ante*, sect. 18.
 (h) Effect of inserting the place of payment at the foot of the note, see *ante*, sect. 16, 25.
 (i) Law as to transfer by indorsement and delivery, see *ante*, sect. 22—24.
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III. CHECKS.

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| <p>1. <i>Definition and Nature of the Instrument.</i>
<i>Particular Properties.</i></p> <p>1. <i>Form of the Instrument.</i>
2.—1st. <i>Place where dated.</i>
3.—2nd. <i>Date or Time.</i>
4.—3rd. <i>Banker on whom drawn.</i>
5.—4th. <i>Payee.</i>
6.—5th. <i>Drawer's Signature.</i>
7.—6th. <i>Crossing the Check with Banker's Name.</i>
8.—7th. <i>Indorsement.</i></p> <p>2. <i>Acceptance and Payment.</i>
9. <i>Liability of Banker.</i></p> | <p><i>Marking Amounts to Acceptance.</i>
10. <i>Banker's Liability as to the Payment of Checks.</i></p> <p>3. <i>Presentment.</i>
11. <i>Presentment must be made with due Diligence.</i>
12. <i>Consequence of keeping a Check after it is due.</i></p> <p>4. <i>Notice of Dishonour.</i>
13. <i>Time of giving Notice.</i></p> <p>5. <i>Remedy on a Check.</i>
14. <i>At Common Law.</i>
<i>By the Custom of Merchants.</i></p> |
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Definition and nature of the instrument.

Particular properties of checks.

Place, where dated.

Date or time.

SECT. 1. A check or draft on a banker is a written order, requesting him to pay on demand to some person therein named a certain sum of money. It is a negotiable instrument, and in many respects resembles a bill of exchange; but checks are exempt from stamp duty if the provisions of 9 Geo. 4, c. 49, are complied with, see *infra*, sect. 2. A check is a legal tender if not objected to, *Wilby v. Warren*, Tidd, 9th ed. 187; but it is not deemed money within the Annuity Act, *Poole v. Cabanes*, 8 T. R. 328. What relates to checks may be considered under the following heads: 1. The form of the instrument; 2. Acceptance; 3. Presentment; 4. Notice of dishonour; 5. Remedy on a check.

1. *Form of the Instrument.*

2. As to the form of the check it is necessary to observe—

1st. *The place where it is dated* or supposed to be drawn, which, in order to exempt a check from stamp duty, must, by the 9 Geo. 4, c. 49, s. 15, be issued from a place within fifteen miles from the residence or house of business of the bankers, the place must therefore be truly specified in the check, otherwise it has been held to be void for want of a stamp, *Waters v. Brogden*, 1 Y. & J. 457.

3.—2d. *Date or time of drawing*; a check will, by the same statute, be void for want of a stamp if it be not dated on or before the day on which it is issued, *Allen v. Keeves*, see also further as to the dating such instruments, *ante*, Pref. *BILLS*, sect. 30.

4.—3d. *The banker on whom drawn*; to bring a check within the exemption of the statute it must be drawn upon a banker, *Castleman v. Ray*, 2 B. & P. 383.

Checks.

Banker on whom drawn.

5.—4th. *The payee*; a check to come within the exemption above mentioned must be payable to bearer on demand, but the name of the payee need not be stated. If drawn in the words "Pay No. 1 or bearer," or "office or bearer," it is sufficient, and this word makes it transferable by mere delivery, see *ante*, BILLS, sect. 95; but a check without the word "bearer" is not a valuable security within the 7 & 8 Geo. 4, c. 29, s. 5. As to the effect of crossing the check with a banker's name, see *infra*, sect. 7.

Payee.

6.—5th. *The drawer's signature*; as a rule, where a check is drawn by several persons not partners, as assignees of a bankrupt, all ought to sign the instrument; but equity will, in cases of bankruptcy and under particular circumstances, direct that the money may be drawn out by checks signed by one or more only of the assignees, as where one is dead and the other abroad, *Ex parte Collins*, 2 Cox, 427; or where one has absconded, *Ex parte Hunter*, 2 Rose, 363.

Drawer's signature.

7.—6th. *Crossing the check with banker's name*; it is the custom in London, when the name of a particular banker is written across a check, to pay that check to no one except to the banker whose name is so written; the effect of this is, that bankers refuse to pay a check so crossed to any but a banker. As to the effect of changing the name of the banker whose name is written across the check, see *Bellamy v. Majoribanks*, 16 Jurist, 106.

Crossing check.

8.—7th. *Indorsement* is not a usual or necessary part of this instrument, as it passes by mere delivery; but the effect of indorsement is the same as in the case of bills, to make the indorser liable to the holder if the check is dishonoured; and it seems that where a check given by a debtor in favour of his creditor has been indorsed by the latter, this has been admitted in evidence against him that he has received payment, *Egg v. Barnet*, 3 Esp. 196; but proof of delivery and payment of a check to the plaintiff is not sufficient evidence of a debt to support a set-off, unless it be shown upon what consideration and under what circumstances the check was given, *Aubert v. Walsh*, 4 Taunt. 293; see also *Cary v. Gerrish*, 4 Esp. 9; *Bleasby v. Crossley*, 3 Bing. 430.

Indorsement.

2. Acceptance and Payment.

9. A banker is bound to pay his customer's checks when he has effects in his hands, otherwise he is liable to an action, there being an implied contract between a banker and a customer that the former should pay the checks of the latter, *Marzetti v. Williams*, 1 B. & Ad. 415. If one banker, holding a check drawn upon another banker, presents it after four o'clock and it is not then paid, but is

Liability of banker.

Marking amounts to acceptance.

Checks.

Banker's liability as to the payment of checks.

marked for payment the next day according to the custom of London bankers, this marking is held to be an acceptance, *Robson v. Bennett*, 2 Taunt. 388; but this is binding only as between the banker and his customers, *Boddington v. Schlencher*, 1 Nev. & Man 540.

10. Where a check, drawn by a customer for a sum of money described in the body of the check in words and figures, was afterwards altered by the holder, who substituted a larger sum for that originally inserted, but in such a manner that no person in the ordinary course of business could have observed it, held that the banker could not charge the customer beyond the sum for which the check was originally drawn, *Hall v. Fuller*, 5 B. & C. 750. So where a check really drawn by a customer was by him torn in pieces, but afterwards a stranger, picking up the pieces, pasted them together and presented the instrument so soiled and joined to the banker, held that the latter, who paid the check, could not charge the customer with the payment, *Scholey v. Ramsbottom*, 2 Campb. 485; but where the wife of a customer, at the request of her husband, filled up a check in such a careless manner as to facilitate a fraudulent alteration thereof by the husband's clerk, held that the loss must fall on the customer, it being his fault to employ a person not sufficiently conversant with business, *Young v. Grote*, 4 Bing. 353. So where a banker gave up bills which he had received from his correspondent upon receiving from the acceptor a check for the amount on another banker, held that he was not guilty of negligence, although it turned out that the check was dishonoured, it being done in the ordinary course of business among bankers, *Russell v. Hankey*, 6 T. R. 12; but if the holder of a check takes banker's notes instead of cash, and the banker fails, the drawer is discharged, *Powell v. Roche*, 6 Esp. 76.

3. Presentment.

Presentment must be made with due diligence.

11. The holder of a check is bound to present it with due diligence, *Richford v. Ridge*, 2 Campb. 537; and it seems to be now established that the holder has the whole of the banking hours of the next day within which to present it for payment, *Richford v. Ridge*, *ub. sup.*; *Robson v. Bennett*, *ub. sup.*; *Moule v. Brown*, 4 Bing. N. C. 266; and if he pay it to his bankers before the time at which the bankers, by presenting it at the clearing house, might obtain payment on the same day, the drawer is not discharged by their omitting so to present it, although by such delay the check was dishonoured the next day, *Boddington Schlencher*, *ub. sup.*

Consequence of keeping a check after it is due.

12. A check is payable immediately, and the holder keeps it at his peril; and a person taking it after it is due, takes it also at his peril; for such a check stands on the same footing as a bill or note that is overdue, and the party taking it can have no better title than the party from whom he takes it, *Down v. Halling*, 4 B. & C. 330;

 Checks.

S. C. 6 D. & Ry. 455; S. C. 2 C. & P. 11; therefore where a check was lost, and five days after it was taken by a shopkeeper in payment of goods, held that in an action by the loser against the shopkeeper, the jury were properly directed to find for the plaintiff, if they thought that the defendant had taken it under circumstances which ought to have excited suspicion, *ib.*; and the rule, that bills or notes taken after they are due are taken subject to the objections existing against them, applies to checks, unless issued long after their date, *Boehm v. Sterling*, 7 T. R. 423; *S. C. 2 Esp. 574*; so if a man accept a note or draft of his debtor on a third person, and hold it an unreasonable time before he demands payment of the person on whom it is drawn, and the latter becomes insolvent, the loss must fall upon the creditor, although it was not a negotiable instrument, *Chamberlyn v. Delarive*, 2 Wils. 353.

4. Notice of Dishonour.

13. A person receiving a check on a banker may either lodge it with his own banker to obtain payment, or may pay it away in the course of trade, although by so doing the notice of its dishonour is postponed a day, one day being allowed for notice from the payee to the drawer, after the day on which notice is given by the banker to the payee, *Robson v. Bennett*, *ub. sup.*; so when a customer pays into his bankers, in the ordinary way, a check drawn upon them by another customer, they are entitled to the same time for ascertaining whether the check will be paid, and giving notice of dishonour (in case it be resolved by them not to pay the check) as in the case where the check is drawn upon other bankers, *Boyd v. Emmerson*, 2 Ad. & Ell. 184; *S. C. 4 Nev. & Man. 99*.

Time of giving notice.

5. Remedy on a Check.

14. By the general rule of law, a banker's check is not money, it is a mere *chose in action*, not assignable, and not recoverable by action, and there are it seems cases which may still fall within the general rule; where therefore a trader, after having committed an act of bankruptcy, borrowed a check, but finding his affairs desperate, returned it without having used it, held that the assignees could not maintain trover for it, *Moore v. Bartrup* or *Barthrop*, 1 B. & C. 5; *S. C. 2 D. & Ry. 25*. But as checks, like bills and notes, have in favour of trade become negotiable instruments, the remedies on bills and notes are applicable to them.

At common law.

By the custom of merchants.

No. CCXIV.

Form of a Check
or Draft on a
Banker.

No. CCXIV.

Common Form of a Check or Draft on a Banker.

No. 505 (a) London (b) 1 January 18 (c)
Messrs. C. & Co. (d)
Lombard Street (e)
Pay to Messrs. C. & S. or & Co. (f) seven hundred and
ninety-two pounds six shillings (g) and four-pence.
£792 : 6s. 4d. (g) T. F. (h)
Indorsed &c. (k)

BILLS OF LADING,

See *post*, SHIPPING.

BILLS OF PARCELS, AND BOUGHT-AND-SOLD
NOTES.

- | | |
|---|--|
| 1. <i>Distinction between Bills of Par-</i> | 2. <i>Signature of the Instrument.</i> |
| <i>cels and Bought-and-sold Notes.</i> | 3. <i>Stamp.</i> |
-

Distinction
between bills of
parcels and

SECT. 1. Bills of parcels are the notes which tradesmen usually
give on selling goods by retail: bought-and-sold notes are notes

- (a) This is merely the private mark of the drawer.
(b) As to the necessity of naming the place where drawn, see *Pref. ante*,
sect. 2.
(c) As to the naming the time, see *ante*, sect. 3.
(d) A check must be drawn upon some banker, see *ante*, sect. 4.
(e) The address of the banker is a mere matter of convenience.
(f) As to what is necessary or otherwise to be stated in a check with regard
to the payee, see *ante*, sect. 5.
(g) The reason for mentioning the sum in the body of the check, and also in
figures in the margin, is the same as in the case of bills, see *ante*, *Pref. Bills*,
sect. 32, 41.
(h) The law as to the drawer's signature in the case of bills of exchange is
applicable to checks, see *ante*, *Pref. sect. 6*, also *Bills*, sect. 44.
(i) As to the effect of crossing a check in this manner, see *ante*, *Pref. sect. 7*.
(k) As to the effect of indorsement in the case of checks, see *ante*, *Pref. sect. 7*.

which pass between the vendor and purchaser in commercial matters: both are entitled to consideration since the Statute of Frauds, which render some note or memorandum necessary as evidence of a contract between the parties, unless in the particular cases there specified. *Bills of
Parcels, &c.*
bought-and-sold
notes.

2. The Statute of Frauds requires the signature of the party to be charged, but no particular form of signature is required; if the name of the vendor is printed, and that of the vendee written by the vendor, that is a sufficient memorandum of the contract to charge the vendor, *Schneider v. Norris*, 2 M. & S. 286; and although the bill of parcels be not signed, if a letter with a proper signature be connected with the bill of parcels, it will be sufficient to take the case out of the statute, *Saunderson v. Jackson*, 2 B. & P. 238. Signature of
the instrument.

3. Any note or memorandum rendered necessary by the 9 Geo. 4, Stamp. c. 14, is exempt from stamp duty.

No. CCXV.

Common Form of a Bill of Parcels.

No. CCXV.

Bill of Parcels.

London 24th October 18 .

Messrs. J. S. & Co.

Bought of T. N. & C. (a) cotton yarn and piece goods (*here follows a list of the articles sold, with the particulars and quantity, with the prices annexed.*)

No. 3 Freeman's Court Cornhill.

No. CCXVI.

Another Form.

No. CCXVI.

Another Form.

Mr. J. M.

Bought of S.

Tons.

Teneriffe barilla wg. 50 : 5 : 1 : 12

Dft 12 lb. per ton . 5 : 1 : 12

Net 50 . . .	at £13 per ton in }	£
	bond . . . }	
	Discount . . .	

Ex Prince Royal.

£

Payable per approved bills not exceeding two months.

(a) If the name of the vendor be in print, it is nevertheless sufficient to charge him, if that of the vendee be written, see *ante*, Pref. sect. 2.

BILLS OF SALE OF GOODS.

1. *Form of a Bill of Sale.*
Absolute or Conditional.

*Effect of Possession or the Want
 of it.*

2. *Stamp.*

Form of a bill
 of sale.

Absolute or
 conditional.

SECT. 1. A bill of sale is, in its operation and form, precisely similar to a bargain and sale; but the bill of sale is of such things as do not savour of the realty, as goods, household furniture, &c. It may be either absolute, when the vendor wishes to convey the entire property to the vendee; or conditional, when the conveyance is subject to a condition for making the same void on payment of the money advanced upon the goods. When such a deed is executed, the property in the goods passes to the vendee by delivery. But when it is made absolute to a person, actual possession must "accompany and follow the deed," otherwise it is void. A delivery of a single article in the name of the whole will not of itself give the purchaser such a possession as will profit him against creditors; but in the case of a conditional bill of sale, the vendor's continuing in possession will not void the deed, 3 Co. 80; *Edwards v. Harben*, 2 T. R. 587. Therefore if an assignment be made of household furniture, and the assignor continues in possession, it is not protected against an execution at the suit of a creditor of the assignor, unless the assignment were notorious, *Armstrong v. Baldock*, Gow, 33; and see *Smith v. Russell*, 3 Taunt. 400. And it is not enough that a person is put in to keep possession jointly with the assignor, *Wordall v. Smith*, 1 Campb. 333. If the vendee suffers the late owner to interfere or exercise any act of ownership, it shall avoid the bill of sale as against a *bonâ fide* execution, *Paget v. Perchard*, 1 Esp. 205; for want of possession on a bill of sale is a notorious badge of fraud, which ought to be left to the jury, *Martin v. Podger*, 2 Bl. 702; *S. C.* 5 Burr. 2631. And a conveyance of chattels, unaccompanied with possession, is void, although in the same instrument be contained a valid mortgage of leasehold buildings, in which the chattels are situated, *Reed v. Blades*, 5 Taunt. 212. And to prove a bill of sale fraudulent, declarations made by the vendor at the time of executing it are admissible, but not those made at another time, *Phillips v. Eamer*, 1 Esp. 355; but a bill of sale made for a valuable consideration, unaccompanied with the possession, is valid against the vendor, and also against a creditor with whose knowledge and assent it was given, *Steel v. Brown*, 1 Taunt. 381.

2. An absolute bill of sale is charged as a conveyance with an *ad valorem* stamp on the consideration money, see CONVEYANCE. As to a conditional bill of sale, see MORTGAGE.

Of Goods.
Stamp.

Assignments of Bills of Sale, see ante, ASSIGNMENT.

No. CCXVII.

Absolute Bill of Sale

No. CCXVII.

*Absolute
Bill of Sale.*

Know &c. that I (*Vendor*) of &c. in consideration of the sum of £ to me in hand paid by (*Purchaser*) of &c, at &c. the receipt whereof I do hereby acknowledge *Do* hereby grant bargain and sell unto the said (*P.*) all the goods and household stuff and implements of husbandry and all other goods and chattels mentioned in the schedule hereunto annexed *To Have* &c. all and singular the said goods household stuff and implements of husbandry and every of them hereby bargained and sold unto and to the proper use and behoof of the said (*P.*) his executors administrators and assigns for ever freely quietly peaceably and without any contradiction claim disturbance or hinderance of any person whatsoever and without any account to me or to any other whomsoever to be made answered or hereafter to be rendered so that neither I (*V.*) nor any other person for me or in my name any right title interest or demand of to or for the said goods &c. or any part or parts thereof ought to exact challenge claim or demand at any time or times hereafter but from all action right estate title claim demand possession and interest thereof shall be wholly barred and excluded by force and virtue of these presents *And* I the said (*V.*) for myself my executors administrators all and singular the said goods and household stuff unto the said (*P.*) his executors administrators and assigns against me the said (*V.*) my executors and administrators and every other person and persons whomsoever shall and will warrant and for ever defend by these presents of which goods I the said (*V.*) have put the said (*P.*) in full possession (*a*) by delivering him one chair in the name of all the

Grant.

Habendum.

Warranty.

(a) As to the efficacy of this clause, see *Obs.*

No. CCXVII. said goods and chattels at the sealing and delivery hereof *In*
Absolute
Bill of Sale.

A. B. (*vendor*) [Seal]

Signed sealed and delivered by the within named (*or* "above-named," *as the case may be*) (*V.*) being first duly stamped and at the same time full possession of all and singular the goods chattels and effects within mentioned (*or* "above mentioned") to be bargained and sold were given by the said (*V.*) to the said (*P.*) by the said (*V.'s*) delivering to the said (*P.*) one chair in the name of the whole of the said goods and premises in the presence of C. D.

Or Delivery of Possession may be indorsed thus.

Memorandum—On the day and year within written (*or* "on the day of ") possession of the goods and premises within bargained and sold was delivered by the said (*V.*) to the said (*P.*) by the said (*V.'s*) giving to the said (*P.*) one chair &c.



No. CCXVIII.

No. CCXVIII.
Conditional
Bill of Sale.
 Testatum.

Conditional Bill of Sale of Goods and Merchandize.

This Indenture made &c. Between A. B. of &c. of the one part and C. D. of &c. of the other part *Witnesseth* That in consideration of the sum of £ paid by the said C. D. to the said A. B. the receipt whereof &c. (*a*) He the said A. B. *Doth* hereby grant bargain sell and confirm unto the said C. D. his executors administrators and assigns *All those* &c. (*here name the goods and merchandize*) *To have and to Hold* the said goods and merchandize and all and singular other the premises hereby bargained and sold for ever And the said (*assignor*) for himself &c. (*clause of warranty as in last Precedent*) *Provided always* and it is hereby agreed by and between the said parties to these presents that if the said A. B. his executors administrators or assigns shall pay or cause to be paid unto the said C. D. his executors administrators or assigns the sum of £ on the day of for the redemption of the said hereby bargained goods Then these presents and every thing herein contained shall cease and be

(*a*) This may be filled up from the last Precedent.

void And the said A. B. doth hereby for himself his executors administrators and assigns covenant and grant with and to the said C. D. his executors &c. in manner following that is to say That he the said A. B. his executors or administrators will pay or cause to be paid to the said C. D. his executors administrators or assigns the said sum of £ at the time and in the manner aforesaid And in case default shall happen to be made in payment of the said sum of £ or any part thereof on the said day of according to the true intent and meaning of these presents Then the said C. D. his executors administrators and assigns shall and may peaceably and quietly have receive and enjoy to his and their own proper and absolute use and behoof for ever the said hereby bargained goods and premises and every part thereof with all and singular the appurtenances without any lawful let suit trouble molestation or denial of the said A. B. his executors administrators or assigns or any other person or persons claiming under him And the said C. D. for himself his executors &c. doth hereby covenant &c. with the said A. B. his executors &c. that he the said C. D. his executors &c. shall and will immediately after the receipt of the said sum of £ according to the true intent and meaning of the condition aforesaid and upon the request of the said A. B. his &c. well and truly deliver unto the said A. B. his &c. the said goods in as good plight and condition [fire and other inevitable accidents excepted] as the same and every of them at this present time now are Signed sealed and delivered &c. (see *last Precedent*).

No. CCXVIII.
*Conditional
Bill of Sale.*

Covenant to
pay, &c.

Covenant to re-
deliver goods
upon payment.

No. CCXIX.

Bill of Sale from the Sheriff of Goods taken in Execution.

Obs. 1. Where goods taken in execution were put up to sale, and the purchaser took a bill of sale from the sheriff, but permitted the vendor to continue in possession, who afterwards executed another bill of sale to another party, held that the first bill of sale was valid, and the purchaser was entitled to recover, *Kidd v. Rawlinson*, 2 B. & P. 59; *S. C.* 3 Esp. 52; so where the purchaser, having taken a bill of sale from the sheriff, let the goods to the vendor at a rent, which was actually paid, held that he had a title, which could not be impugned as fraudulent by other creditors having executions against the same party, *Watkins v. Birch*, 4 Taunt. 823.

No. CCXIX.
*Goods taken in
Execution.*

No. CCXIX. 2. An *ad valorem* stamp as on a conveyance, see *post*, COVEY-
Goods taken in ANCES.
Execution.

Recital of writ
 of execution.

Execution of
 writ.

Valuation of
 goods.

Sale to creditor.

Testatum.

This Indenture &c. between C. B. of &c. Esq. sheriff of the said county of the one part and (*Creditor*) of &c. of the other part *Whereas* a writ of *fiery facias* issuing out of her Majesty's Court at *Westminster* directed to the said C. B. was received at the office of the under-sheriff commanding him that he should cause to be levied of the goods and chattels of G. L. within his bailiwick a certain debt of £ which the said (C.) had recovered against him in the said court together with the sum of £ for damages costs and charges which the said (C.) had sustained and expended by reason of his suit *And whereas* the said C. B. hath by virtue of the said writ taken in execution the stock and utensils in trade household furniture goods chattels and other effects and things particularly mentioned and set forth in the schedule hereunder written being in and upon the mesuage yard stable and other buildings and premises now in the occupation of the said G. L. situate and being in F. in the county aforesaid and hath caused the same goods chattels and effects to be appraised by R. S. a person of competent skill who hath valued the same at the sum of £ *And whereas* the said C. B. hath agreed to assign all the said stock &c. so taken in execution as aforesaid and particularly mentioned &c. unto the said (C.) for the sum of £ at which the same have been valued as aforesaid *Now this Indenture witnesseth* That in consideration of the sum of £ of lawful money of Great Britain by the said (C.) to the said C. B. in hand paid at or before the execution of these presents the payment and receipt of which said sum of £ and that the same is in full for the absolute purchase of the said stock and utensils in trade household furniture and other goods chattels and effects he the said C. B. doth hereby acknowledge and of and from the same and every part thereof doth acquit release and discharge the said (C.) his executors administrators and assigns for ever *He* the said C. B. as sheriff as aforesaid as far as he lawfully can or may by virtue of his said office of sheriff and not further or otherwise *Doth* bargain sell assign and set over unto the said (C.) his executors administrators and assigns *All* and singular the stock and utensils in trade household furniture goods chattels and effects particularly mentioned and set forth in the schedule hereunder written and which have been taken in execution by

the said C. B. by virtue of the said writ of *feri facias* of all which said goods chattels and effects hereby bargained sold and assigned the said C. B. at the time of the sealing and delivering hereof hath delivered or intends to deliver or cause to be delivered possession to the said (C.) *To Hold* the said stock &c. unto the the said (C.) his executors &c. as his and their own goods chattels and effects absolutely *In witness* whereof the said C. B. hath hereto set his hand and seal of office and the said (C.) hath set his hand and seal the day and year first above written

The Schedule above referred to.

(Add the Schedule.)

(Signature.)

The above written indenture having been first duly stamped was signed with the name of C. B. sheriff of the county of F. sealed with his seal of office and delivered as his act and deed by J. C. gentleman under-sheriff of the said county in the presence of W. G.

Signed sealed and delivered by
the above named (C.) in the
presence of

R. M.

Common Receipt for Consideration-money by Sheriff.

Mem. That at eight o'clock in the morning of the day of the date of the above written indenture T. H. the bailiff of the within-named sheriff on the part and behalf of him the said sheriff and by his order delivered to the above-named (C.) one chair in the name and as the symbol of all the goods chattels and effects mentioned in the above-written schedule or inventory in my presence

C. L.

No. CCXX.

Bill of Sale for securing the Payment of a Sum of Money (with Variations, where it is given only as a Collateral Security, accompanied with a Bond or Warrant of Attorney).

Obs. On the assignment of property by an instrument of this sort, there must be a complete change of possession, or the deed will be void against creditors; it is not enough that a person is put in to keep possession jointly with the vendor, *Wardall v. Smith*, 1 Campb. 333.

No. CCXIX.
*Goods taken in
Execution.*

No. CCXX.
*Payment of
Money.*

No. CCXX.

Payment of
Money.

Recital of debt.

And agreement
to assign goods
to creditor.

Testatum.

Habendum.

Proviso for re-
demption.Sale to a pur-
chaser.

This Indenture &c. between (*Debtor*) of &c. of the one part and (*Creditor*) of &c. of the other part *Whereas* (*a*) the said (*D.*) is indebted unto the said (*C.*) in the sum of £ and being at present unable to pay the same hath agreed to make such assignment or bill of sale to him of the goods chattels furniture and effects mentioned in the schedule hereunder written for better securing the payment thereof as hereinafter is expressed (*b*) *Now this Indenture witnesseth* That in pursuance of the said agreement and in consideration of the sum of £ so due (*c*) to the said (*C.*) by the said (*D.*) at the time of the sealing and delivery of these presents as hereinbefore is mentioned which the said (*D.*) doth hereby admit and acknowledge and *He* the said (*D.*) *Doth* hereby bargain and sell unto the said (*C.*) his executors administrators and assigns *All* and singular the household furniture beds bedding plate china linen glass books pictures and other the goods chattels and effects mentioned or described in or by the inventory thereof hereunder written or hereunto annexed and all the estate right title interest property claim and demand whatsoever both at law and in equity of him the said (*D.*) of in or to the same respectively *To Have and to Hold* and take and enjoy the said household and other furniture goods &c. and all and singular other the premises hereinbefore bargained and sold or mentioned or intended so to be with their and every of their rights members and appurtenances unto the said (*C.*) his executors &c. to and for his and their own proper use and benefit subject nevertheless to the proviso for redemption of the premises hereinafter contained that is to say Provided always and these presents are upon this express con-

(*a*) If the bill of sale be made to a purchaser, say, "*Whereas* the said (*purchaser*) hath contracted with the said (*vendor*) for the absolute purchase of the several goods chattels furniture and effects mentioned in the schedule hereunder written.

(*b*) If the bill of sale be intended to accompany a bond or warrant of attorney as a collateral security, say, "*Whereas* the said (*debtor*) hath executed a bond (or 'warrant of attorney') in writing under his hand and seal bearing or intended to bear even date with these presents in the penal sum of £ with a condition (or 'defeasance') thereunder written for making void the same on payment of the sum of £ and interest after the rate of five per centum per annum on the day of now next ensuing *And whereas* it hath been agreed that for better securing the payment of the said sum of £ the said (*debtor*) shall execute such bill of sale of the goods and effects mentioned in the schedule hereunder written as hereinafter is expressed." *Now &c.*

(*c*) If the sale be to a purchaser, the consideration of a debt must be omitted.

dition that if the said (*D.*) his executors or administrators shall pay unto the said (*C.*) his executors administrators or assigns the sum of £ with interest for the same after the rate of five *per cent. per annum* on the day of next ensuing the date of these presents without any deduction or abatement whatsoever [except income tax] then and in such case the bargain and sale or other assurance hereinbefore made (*a*) shall cease and forthwith be delivered up to be cancelled *And* (*b*) the said (*D.*) doth hereby for himself his heirs executors and administrators covenant with the said (*C.*) his executors administrators and assigns in manner following that is to say That he the said (*D.*) his executors or administrators shall and will well and truly pay or cause to be paid unto the said (*C.*) his executors administrators and assigns the said sum of £ at the time and after the rate and in the manner aforesaid (*c*) appointed for the payment thereof according to the true intent and meaning of these presents *And lastly* the said (*D.*) for himself &c. (*clause of warranty, see ante, Absolute Bill of Sale* (*d*)).

No. CCXX.
Payment of
Money.

Covenant by
debtor to pay
money.

—◆—

Bills of Sale of Ships, &c. see SHIPPING.

(*a*) If the bill of sale accompany a bond or warrant of attorney, say, "together with the said hereinbefore in part executed bond (or 'warrant of attorney')."

(*b*) Where it is a purchase, this covenant must be omitted.

(*c*) If the bill of sale accompany a bond or warrant of attorney, say, "in the manner hereinbefore and in the condition (or 'defeasance') of the said in part recited bond (or 'warrant of attorney') appointed for the payment thereof accordingly.

(*d*) If it be necessary, add here: "*And* the said (*creditor*) for himself &c. doth covenant &c. with the said (*debtor*) by these presents that he the said (*creditor*) his executors &c. shall and will immediately after the receipt of the said sum of £ according to the true intent and meaning of the condition aforesaid upon the request of the said (*debtor*) well and truly deliver unto the said (*debtor*) &c. the said goods &c. and all other the premises which the said (*creditor*) received of the said (*debtor*) at or before the sealing and delivery of these presents in as good plight and condition as the same and every of them at this present time now are."

Covenant by
creditor.

BONDS.

- | | |
|---|--|
| 1. <i>Definition of a Bond.</i>
<i>Distinction between Obligor and</i>
<i>Obligee.</i>
<i>Penalty.</i>
<i>What recoverable on a Bond.</i> | 3. <i>Effect of a Bond joint or joint</i>
<i>and several.</i>
4. <i>Contribution by co-Sureties.</i>
5. <i>Form of a Bond.</i>
6. <i>Consideration.</i>
7. <i>Condition of a Bond.</i>
<i>Illegality of, vitiates Bond.</i>
<i>Construction of the Condition.</i>
8. <i>Form of Condition.</i>
9. <i>Stamp.</i> |
| 2. <i>Who may or may not be Parties</i>
<i>to a Bond.</i>
<i>Bond joint only.</i>
<i>Joint and several.</i>
<i>Several only.</i> | |



Definition of a
bond.

Difference be-
tween obligor
and obligee.

Penalty.

What recover-
able on a bond.

Who may or
may not be par-
ties to a bond.

SECT. 1. A bond or obligation is a deed whereby one called the obligor binds himself to one called the obligee to pay money or do some other thing. In *Underwood v. Harwood*, 10 Ves. 226, the obligee is taken for the person bound, that is to say, in the vulgar sense of the word, the person obliged; but as this is not the legal use of the term it is proper to observe the distinction. When a bond is simple, or single, that is, without a condition, it is properly an obligation; but when a condition is annexed, as is usually the case, it is a double bond, most commonly called a bond, Shep T. 367. The obligor is generally bound in a penal sum, double the amount of the sum intended to be secured, and on his failing to perform the condition the bond becomes forfeited at law, but equity interposes to restrain the obligee from taking more than his principal and interest. And in pursuance of the same principle, the 4 & 5 Anne, c. 16, provides, that when a bond is given to secure the payment of a sum of money, a tender of the principal sum due, with interest and costs, shall be a full satisfaction of such bond, though the same at law may be forfeited. By an equitable construction of this statute, it is held, that interest cannot be recovered upon a bond beyond the amount of the penalty, it being a settled point, both at law and in equity, that the penalty is the debt, except in particular cases, *Wild v. Clarkson*, 6 T. R. 303; *Clark v. Seton*, 6 Ves. 415.

2. All persons having a legal capacity to contract may, in general, bind themselves in bonds and obligations, 4 Co. 124; 5 Co. 119. But an infant cannot bind himself in a bond with a penalty, not even for necessities, 1 Lev. 86; *Fisher v. Monbray*, 8 East, 330. So the bond of an idiot, or of one that is drunk at the time of making the bond, is void, 2 Stra. 1104; Bull. N. P. 172. So of a *feme covert*, except the husband assents, 5 Co. 119. So a bond given by a man in duress, that is, unlawful imprisonment, is void, 2 Inst. 482; 4 Inst. 97; Allen, 92. And one partner cannot bind the others by bond,

Bonds.

unless an express power to that effect be given, *Harrison v. Jackson*, 7 T. R. 207. Executors and administrators are bound by the obligation of the testator, although not named, but the heir is not bound, unless named. And the heir, if named, on a defect of personal assets in the hands of the executors and administrators, is bound to discharge the same, provided he has real assets, 2 Comm. 340; Bull. N. P. 175.

If the obligation be made to one and his heirs, the executors and administrators shall take advantage of it, *Shep. Touch.* 376. When two or more bind themselves in a bond by the words, "We bind ourselves," and say no more, the bond is joint; but if it be thus, "We bind ourselves, and each of us, our heirs, and each of our heirs, &c.," the bond is joint and several, *Shep. Touch.* 376. If it be expressed in a bond that two or more persons are jointly and severally bound, and one of them does not execute the bond, it is not the joint bond of those who executed it, but only the several bond of each of the parties signing, *Elliot v. Davis*, 2 B. & P. 338. If in a bond conditioned for the payment of a sum, it be worded thus, "For which payment to be well and faithfully made we bind ourselves and each of us for himself for the whole and entire sum of £ ," it has been held that this was a several bond only, and that the obligees, by removing the seal of one of the obligors, did not render it void as to the others, *Collins v. Prosser*, 1 B. & C. 682.

Bond joint only.

Joint and several.

Several only.

3. When the obligation is joint, the obligee must sue the obligors altogether, *Shep. Touch.* 375. When the obligation is joint and several, he may either sue them altogether, or each of them separately; but he may not sue some and spare the rest, 1 Saund. 291. If the bond be joint, and one of the obligors die, the survivor only is charged; but it is otherwise where the bond is joint and several, 2 Vern. 99.

Effect of a bond joint or joint and several.

4. The right of contribution, as between co-sureties, is not precisely the same at law as in equity. Where several parties are bound, they must be bound in one and the same penalty, to give co-sureties a right of action for contribution; but if each is bound for a distinct penalty, it does not make the one bound for the penalty of the other. For the remedy at law is founded on the principle, that one pays that to which all are liable, *Collins v. Prosser*, 1 B. & C. 682. On the other hand, contribution in equity being founded on a principle of justice and equality, it is immaterial whether co-sureties give joint or separate bonds, except that in the latter case they must contribute to the amount of the security; but if they are all jointly bound in one obligation in a penal sum, they must all contribute equally, *Deering v. Earl of Winchelsea*, 2 B. & P. 270.

Contribution by co-sureties.

5. Although the usual manner of framing a bond is the best, yet any words in a deed sealed and delivered, which appears on the face of it to have been intended as a bond, will make a good obligation,

Form of a bond.

Bonds.

Cro. Car. 129. An obligation must be on parchment or paper, and sealed (which is indispensably requisite), otherwise it is void, Co. Litt. 35 b; Shep. Touch. 376; Dyer, 19 a; but signing is not essential to its validity, 2 Cro. Eliz. 642, nor any particular form of delivery, Co. Litt. 36 a. If the bond be altered by the obligee, although but in an immaterial point, he vacates the deed, 10 Co. 92; Bull. N. P. 267. A release of a bond, or a dispensation with its conditions, must be by deed, *Sellers v. Bickford*, 8 Taunt. 31; *S. C. J. B. Moore*, 460.

Consideration.

6. The want of a consideration to a bond affords no ground of objection; but if there be any thing illegal in the consideration, the defendant is allowed to plead it in bar to the action, *Fallowes v. Taylor*, 7 T. R. 477.

Condition of a bond.

Illegality of, vitiates bond.

7. If the condition of a bond be to do that which is unlawful, impossible, or so insensible and uncertain that the meaning cannot be known, it is void, Shep. Touch. 372; 2 Salk. 462. So if the condition be against the provisions of a statute, the rules and claims of decency, and the dictates of morality, it is void at law and in equity, 1 Fonbl. Eq. 228. Bonds entered into for particular purposes are declared void by several statutes, as by 5 & 6 Edw. 6, c. 16, bonds given for buying or selling offices; by 13 Eliz. c. 5, for avoiding the debt and duty of others; by 16 Car. 2, c. 7, and 9 Ann. c. 14, for procuring the return of a member of parliament; by 12 Ann. c. 16

Construction of condition.

bonds upon usurious contracts. The condition of a bond being in favour of the obligor, as protecting him from the penalty, 1 Saund. 16, it is literally construed, and may be restrained by the recital; as where in the condition it was recited, that a sheriff had appointed the defendant bailiff of a hundred within his county, it was adjudged that the words "all warrants" in the condition itself should be intended only all warrants which were directed to the defendant as bailiff of the said hundred, and not other warrants, cited in *Lord Arlington v. Merrick*, 2 Saund. 411, 412. This rule of construction is more strictly observed in favour of sureties, where in the condition of the bond it was recited that the surety was bound for six months only, although the words in the condition were indefinite, "during all the time he shall continue, &c." *Lord Arlington v. Merrick*, 2 Saund. 411. So a bond entered into by a surety for the faithful service of a clerk to any person or persons (not forming an incorporated company) becomes void as soon as there is any change in the firm by death or otherwise, *Wright v. Russell*, 3 Wils. 532; *S. C.* 2 Bl. 934; *Barker v. Parker*, 1 T. R. 287; unless the condition be so worded as to provide for this contingency.

Form of condition.

8. If the words at the close of the condition, "Then this condition shall be void," be omitted, the condition is void, but the obligation remains in force; but the omission of the subsequent words, "or else shall remain in full force," is immaterial, Shep. Touch. 371. If the

condition of a bond be to pay money, or to do any other thing, and no time be named in the condition, it is now settled that the bond shall be payable on the day of the date, *Farquhar v. Morris*, 7 T. R. 124. When no place is mentioned for the performance of the condition, it must be done to the person of the obligee, if he be within the four seas. But although the place be named, yet if the obligee receive payment in any other place, it is sufficient to save the bond; and by the 4 Anne, c. 4, s. 12, such payment may be pleaded in bar of any action, Harg. Co. Litt. 212 n.

Bonds.

9. The amount of stamp duty on bonds is now regulated by 13 & 14 Vict. c. 97, which imposes an *ad valorem* duty on the amount secured by the bond, and, if it contain 2160 words, a progressive duty (regulated by the sum secured) on every 1080 words beyond the first 1080. If several persons are bound under one penalty for the performance of the same matters, one stamp is sufficient, *Godson v. Forbes*, 1 Marsh. 531. If the stamp be insufficient, it is a ground of nonsuit, 2 M. & S. 88; 2 Price, 20; but it is sufficient if the instrument bear a proper stamp when it is produced, 2 Marsh. 485; 7 Taunt. 147.

Stamp duty,
amount.

Bonds by collectors of land tax are exempted from stamp duty by 3 Geo. 4, c. 88; so receivers of land and assessed taxes, by 4 & 5 Will. 4, c. 60, s. 15; so bonds to prosecute commissions or fiats of bankruptcy and assignments thereof, also replevy bonds and assignments thereof, are exempt from stamp duty by 5 Geo. 4, c. 41; so bonds by treasurers of savings banks, and also administration bonds for effects of depositors, by 9 Geo. 4, c. 92, s. 41; so bonds by owners of vessels to commissioners of customs, 3 & 4 Will. 4, c. 53, s. 19; so bonds by licensed dealers in stamps, by 3 & 4 Will. 4, c. 98, s. 1; so bonds by treasurer, &c. of loan society, 5 & 6 Will. 4, c. 23, s. 5; 3 & 4 Vict. c. 110, s. 12; so bonds by collectors of highway rates, by 5 & 6 Will. 4, c. 50; and East India bonds, on payment of a composition, by 5 & 6 Will. 4, c. 64, s. 4.

Exemptions.

OBLIGATORY PART OF A BOND.

No. CCXXI.

From One to One.

No. CCXXI.

*From One to
One.*

Know all Men by these presents That I (*obligor*) of &c. am held and firmly bound to (*obligee*) of &c. his executors administrators and assigns in the sum of £ (double the condition, see Pref. sect. 1) to be paid to the said (*obligee*) his executors administrators or assigns to which payment well and truly to be made I bind

No. CCXXI. myself my heirs (a) executors and administrators firmly by these presents.

From One to One.

Sealed with my seal and dated this day of in the
year of our Lord 18 and in the year of the reign of



No. CCXXII.

No. CCXXII.

From Two or more to One.

From Two or more to One.

Know all &c. That we (*obligor*) of &c. and (*co-obligor*) of &c. or (*surety*) of &c. are held &c. to (*obligee*) of &c. in &c. to be paid &c. to which payment we bind ourselves and each of us and each of our heirs executors and administrators firmly by these presents.

Sealed with our seals and dated &c.



No. CCXXIII.

No. CCXXIII.

From One to Two or more.

From One to Two or more.

Know all &c. That I (*obligor*) of &c. am held &c. to (*obligees*) or either of them their or either of their executors administrators or assigns in &c. to be paid &c. to which &c. I bind myself, &c.

Sealed &c. Dated &c.



No. CCXXIV.

No. CCXXIV.

From One to a Corporation.

From One to a Corporation.

Know all &c. That I (*obligor*) of &c. am held &c. to (*obligees*) their successors or assigns in the sum of £ of &c. to be paid to the (*obligees*) their &c. to which payment &c.

(a) As to the naming of the heirs, see Pref. sect. 2.



CONDITIONS OF BONDS.

No. CCXXV.

No. CCXXV.

To Account
(Receiver).*Bond from a Receiver.**Obs.* As to the form, &c. of the condition, see Pref. sect. 8.*Know all* &c. That &c.

Obligation.

Whereas the above-named (*obligee*) hath retained and employed the above-bounden (*obligor*) to be the receiver of the rents issues and profits of all and singular his the said (*obligee's*) messuages lands and tenements situate lying and being in &c.

Recitals.

Now the Condition of the above-written obligation is such That if the said (*obligor*) shall from time to time and at all times hereafter pay or cause to be paid unto the said (*obligee*) his heirs executors administrators or assigns all such sum and sums of money as shall be by him had and received of the said rents issues and profits and render to the said (*obligee*) his heirs &c. a true and just account of all and every sum and sums of money that shall be by him received paid laid out and disbursed of from for or on account of the said lands or the rents &c. thereof or of for or on account of the said (*obligee*) his &c. *And also* will truly justly and honestly in every respect behave himself in the said office or employment of receiver of the aforesaid rents &c. Then this obligation to be void or else to be and remain in full force and virtue.

Condition.

Signed sealed and delivered
by the above-named A. B.
(being first duly stamped)
in the presence of

A. B. (*obligor*)

C. D.

E. F.

No. CCXXVI.

No. CCXXVI.

By Treasurer.

*Bond from the Treasurer of a Company.**Know all* &c. That &c.

Obligation.

Whereas an act of parliament was passed &c. (*recite act for forming a railway or a canal company, &c., as the case may be*) And it was among other things enacted That it should be lawful for the said company of proprietors at any general meeting as-

Recital of act
of parliament.

No. CCXXVI. *sembled and they were thereby required from time to time to*
By Treasurer. *nominate and appoint a treasurer and clerk and such other of-*
ficers as they should think proper And should take sufficient
security from every such treasurer or other officers having the
care and custody of any money to be raised or received by virtue
of the said act for the due execution of the said office as the
said company of proprietors should think proper And whereas
at a general meeting of the company of proprietors of
holden &c. the above-bounden (obligor) was appointed treasurer
to the said company And upon such appointment the said
(obligor) agreed to enter into a bond in a sufficient penalty for
insuring to the said company the faithful discharge of his duties
in the said office and in pursuance of such agreement hath executed
the above-written bond subject to such condition for making the
same void as hereinafter is contained.

Conduition. *Now &c. That if the said (obligor) do and shall weekly during*
such time as he shall continue or be treasurer of the said com-
pany or oftener if thereunto required well and truly account for
pay and deliver unto the committee of the said company for the
time being appointed to manage the affairs of the company or
unto such other person or persons as the said committee shall
appoint to receive the same all such sum and sums of money
books papers writings receipts vouchers matters and things which
he the said (obligor) hath received or shall from time to time be
intrusted with or which shall come into his hands for or on account
of or to the use of the said company and their successors And
also if the said (obligor) do and shall from time to time whilst he
shall continue treasurer in all things and in all respects well
and faithfully execute and perform the said office of treasurer
Then &c.

Bonds by Administrators.

To Account by
Administrator.
Bond required
by statute.

Obs. 1. By the 22 & 23 Car. 2, c. 10, the ordinary or ecclesiastical
judge is required to take a bond, with two or more sureties, from the
person to whom the administration of an intestate's goods is com-
mitted, duly to account for such effects as shall come into his hands.

2. As to sureties, and their remedies against each other, see Pref.
sect. 4.

Stamp duty. *3. If the estate to be administered do not exceed 20*l.* in value, an*
administration bond is exempt from all duty, otherwise it is charged,

by the 55 Geo. 3, c. 184, with a 1*l.* stamp duty; but bonds for administering effects of depositors in saving banks, not exceeding 50*l.*, are exempt. *To Account by Administrator.*

—◆—

No. CCXXVII.

Bond by an Administrator and his Sureties to account for his Intestate's Effects.

No. CCXXVII.

To Account by Administrator.

Know all &c. That I (*administrator*) of &c.

Obligation.

Now &c. That if the above-bounden (*A.*) do make or cause to be made a true and perfect inventory of all and singular the goods chattels and credits of the said (*intestate*) which have or shall come into his hands possession or knowledge or into the hands possession or knowledge of any other person or persons for him and the same do exhibit or cause to be exhibited into the registry of the court of on or before the day of next ensuing and the same goods chattels and credits and all other the goods chattels and credits of the said deceased which at any time hereafter shall come to the hands or possession of the said (*A.*) or of any other person or persons for him shall duly administer according to law *And further* shall and do make or cause &c. a true and just account of his said administration at or before the day of and of all the rest and residue of the said goods chattels and credits which shall be found remaining upon the said (*A.*'s) account the same being first examined and allowed by the judge or judges for the time being of the said court and shall deliver and pay unto such person or persons respectively as the said judge or judges by his or their decree or sentence pursuant to the true intent and meaning of this act shall limit and appoint *And* if it shall appear that if any last will and testament was made by the said deceased and the executors therein named do exhibit the same unto the said court and the said (*A.*) do render and deliver up the said letters of administration a probate of such testament being first had and made in the said court Then &c.

—◆—

Condition.

No.
CCXXVIII.

No. CCXXVIII.

By Clerk.

Bond from a Clerk and his Surety for the faithful Execution of his Office in a Brewery.

Obligation.

Know all &c.

Recitals.

Whereas &c. in and by certain articles of agreement bearing date &c. (recite agreement between the above-bounden (clerk) and the said (obligees) his principals) And whereas upon the treaty for the engagement of the said (obligor) as such clerk he the said (surety) on the behalf and at the request of the said (obligor) did consent and agree to become surety unto the said (obligees) for the said clerk's true and faithful execution and discharge of his said office as hereinafter is mentioned

Condition.

Now &c. That if the said (obligor) do and shall at all times so long as he shall continue clerk of the said (obligees) in all things well and truly abide by perform fulfil and keep all and singular the covenants and agreements contained in the aforesaid articles on his part and behalf and do and shall faithfully and diligently serve the said (obligees) and the survivors or survivor of them for the full term of years mentioned in the said articles and according to the full and true intent and meaning of the said articles Then &c.

Bond to secure the Payment of an Annuity to a former Mistress, see ante, No. LXXII.

ANNUITY BONDS.

Obs. As to the stamp duty on bonds for securing the payment of an annuity, see 13 & 14 Vict. c. 97, sched. Bond.

No. CCXXIX.

*Bond for Payment of an Annuity (General Precedent).**Know all, &c.*

Whereas the above bounden (*obligors*) hath contracted with the above-named (*obligees*) to grant to them and the survivor of them and the executors administrators and assigns of such survivor one annuity or clear yearly sum of £ for the lives of H. H. of &c. and W. H. of &c. and the life of the survivor of them at and for the price or sum of £ *And whereas* upon the treaty for the purchase of the said annuity or clear &c. of £ it was agreed that the same should be secured by the joint and several warrant of attorney of the above bounden (*obligors*) for confessing judgment thereon upon which judgment is intended to be entered up as hereinafter mentioned in that behalf *And* it was further agreed that the said annuity or &c. of £ might be repurchased at the time and upon the terms and conditions hereinafter mentioned in that behalf *And also* that the costs and charges of preparing and perfecting the said securities for payment of the said annuity and entering up the said judgment and inrolling a proper memorial thereof should be borne by the said (*obligors*) *And whereas* in part performance of the said agreement the said (*obligors*) have on the day of the date of the above written obligation executed a warrant of attorney bearing even date herewith empowering certain attornies therein named to confess judgment thereon jointly or severally against them in her Majesty's Court of Queen's Bench at Westminster at the suit of the said (*obligees*) for the sum of £ besides costs of suit as of Hilary term last Easter term next or any other subsequent term with a condition or defeasance thereon indorsed that no execution should issue on the judgment intended to be entered up in pursuance of the said warrant of attorney until default should happen to be made in payment of the said annuity on some or one of the days and times and in manner hereinafter mentioned and appointed for the payment thereof when and in such case it should and might be lawful for the said (*obligees*) or the survivor of them or the executors administrators and assigns of such survivor to sue out one or more writ or writs of execution upon or by virtue of the said judgment for all arrears of the said annuity which should then be due *And* all costs charges damages and expenses which they or any or either

No. CCXXIX.

Payment of an Annuity.

Obligation.

Recital of contract.

Warrant of attorney.

Repurchase of annuity.

Costs of securities.

Defeasance.

Writ of execution to recover arrears.

No. CCXXIX.
*Payment of an
 Annuity.*

Want of re-
 viving judg-
 ment.

Terms of re-
 purchase.

Acknowledg-
 ment of satis-
 faction.

Condition.

of them might have been at or put unto by reason or on account of the nonpayment thereof without reviving the said judgment or doing any act matter or thing to keep the same on foot notwithstanding the said judgment should have been entered of record for the space of one year or more *And* that the said (*obligors*) or either of them their or either of their heirs executors or administrators should not nor would have receive take or attempt by any means to have receive or take any plea exception or advantage for want of reviving the said judgment or keeping the same on foot *And* that if they or either or any of them should attempt so to do by action motion or other legal proceeding whatsoever these presents might be pleaded and shown in bar thereto any rule or practice of the court or other matter or thing to the contrary notwithstanding *And whereas* it hath been agreed between the said parties that the said (*obligees*) or the survivor of them or the executors administrators or assigns of such survivor shall and will accept and take the sum of £ in full for the repurchase of the said annuity or yearly sum of £ at the time and upon the terms hereinafter conditioned for the same *And* they have also agreed that upon the decease of the survivor of them the said H. H. and W. H. in case the said annuity shall not have been repurchased and upon full payment of the said annuity and of the proportional part (*a*) thereof up to and inclusive of the day of decease of such survivor and of all costs charges and expenses as aforesaid then the said (*obligees*) or the survivor &c. or the executors &c. in either of the said cases shall and will at the request cost and charges of the said (*obligors*) or either of them or their or either of their executors administrators or assigns acknowledge satisfaction on the record of the said judgment.

Now the Condition &c. That if the above-bounden (*obligors*) or the survivor of them their or either of their heirs executors or administrators shall and do well and truly pay or cause to be paid unto the said (*obligees*) or the survivor of them or the executors administrators or assigns of such survivor for and during the joint natural lives of the said H. H. and W. H. and the life of the survivor of them one annuity or clear yearly sum of £ of lawful money of Great Britain free and clear of and from all taxes charges and incumbrances whatsoever parliamentary or

(a) As to the apportionment of rents, see *ante*, APPORTIONMENT.

otherwise (a) and to be paid and payable at or in the dining-hall of Lincoln's Inn in the said county of Middlesex or at such other place or places in or about London or Westminster as the said (*obligees*) or the survivor of them or the executors administrators or assigns of such survivor shall direct or appoint between the hours of eleven and twelve of the clock in the forenoon of the several respective days and times following that is to say (see *ante*, No. LXXIII.) *And also* such a like proportional part thereof as shall accrue from and after the last of the aforesaid days of payment next preceding the decease of the survivor of them the said H. H. and W. H. from and up to the day on which such decease shall happen or if the said (*obligors*) or either of them their or either of their heirs executors or administrators shall at any time after the term of five years to be computed from the day of the date of the above-written obligation be desirous of repurchasing the said annuity or clear yearly sum of £ and of such his or their intention shall give three calendar months' notice in writing unto the said (*obligees*) or the survivor of them or without or in lieu of such notice shall pay unto them or him the sum of £ being one half-year's portion of the said annuity or &c. of £ and do and shall on the expiration of such notice or on such payment in lieu thereof as the case may be well and truly pay or cause to be paid unto the said (*obligees*) or the survivor of them or the executors administrators or assigns of such survivor the sum of £ being the original purchase money of the said annuity or clear yearly sum of £ and all and every sum and sums of money which shall then be due and owing to the said (*obligees*) or the survivor of them, or the executorr administrators or assigns of such suvivor for or on account of the said annuity &c. of £ up to and inclusive of the day of paying the same *And also* for and on account of all costs charges damages and expenses which they or any of them shall or may have been at or put unto for or on account of the nonpayment of the said annuity then the above-written obligation shall be void and of no effect otherwise be and remain in full force and virtue.

No. CCXXIX.

*Payment of an
Annuity.*

Memorandum—Received of the within-named (*obligees*) the sum of £ in manner following that is to say one Bank of

(a) If it be necessary, say, "except the income or property tax payable on the same annuity."

No. CCXXIX. England note No. for the sum of £ as in the within-written bond or obligation is agreed to be given by the said (*obligees*) for the purchase of the within-mentioned annuity or clear yearly sum of £ and which said sum of £ was paid by the said (*obligees*) in their own proper person to the said (*one obligor*) in his own proper person

(*Obligor*)

Witness E. F.



No. CCXXX.

*Annuity to a
Man and his
Wife.*

No. CCXXX.

*Bond for securing the Payment of an Annuity to a Man and
his Wife for their Lives.*

Obligation.

Know all &c. That &c.

Recitals.

Contract for
purchase of an
annuity.

Whereas the above-named (*obligee*) hath contracted with the above-bounnden (*obligor*) for the absolute purchase of one annuity or annual sum of £ to be paid unto the said (*obligee*) and his assigns during his life and after his decease to E. his wife and her assigns if she should survive him free from taxes and without any other deduction whatsoever by half-yearly payments on the days hereinafter mentioned Together with a proportional part of the said annuity or annual sum of £ for the time which at the decease of him the said (*obligee*) shall have elapsed of the said annuity then growing due And the price and consideration for the purchase of the said annuity or annual sum of £ is £ sterling money of Great Britain and the sum of £ interest or share in capital joint stock of 5 per cent. annuities created by an act of parliament passed &c. *And whereas* the said (*obligee*) hath before the execution of the above-written bond paid the said sum of sterling money to and transferred the said sum of £ Bank annuities into the name of the said (*obligor*) in the books of the Governor and Company of the Bank of England which payments the said (*obligor*) doth hereby acknowledge And whereas upon the treaty for the said purchase it was agreed that the cost and charges of procuring the said sum of £ upon the said annuity and of preparing and perfecting the securities for the same should be borne and paid by the said (*obligor*)

Condition.

Now the Condition &c. That if the above-bounnden (*obligor*) his executors or administrators do and shall well and truly pay unto the said (*obligee*) or his assigns during the term of his natural

life one clear annuity or annual sum of £ by half-yearly payments on or at the days and times following that is to say on the day of and on the day of the first half-yearly payment to be made on the day of next ensuing the date of the above-written bond And do and shall also if E. now the wife of the said (*obligee*) be living at his death well and truly pay or cause &c. unto the said E. D. yearly and every year during the then remainder of her life a like clear annuity or yearly sum of £ of &c. at or on the aforesaid feasts or days by half-yearly payments the first payment of the last-mentioned annuity to be made on the first of the said feasts or days which shall happen next after the decease of the said (*obligee*) And do and shall make all the said payments as well to the said (*obligee*) during his life as after his decease to the said E. D. if she survive him during the then remainder of her life without any deduction or abatement whatsoever out of either of the said annuities or yearly sums or any part thereof for or by reason of any parliamentary taxes or impositions whatsoever or for or in respect of any other matter cause or thing whatsoever And also do and shall within ten days after the decease of the said (*obligee*) and E. his wife respectively in case he or she shall die in the interval between any of the half-yearly days of payment well and truly pay unto the executors and administrators or assigns of the said (*obligee*) or of the said E. his wife if she survive him a proportional part of the said annuity or annual sum of £ for the time which at the decease of the said (*obligee*) or E. his wife shall have elapsed of the half-yearly payment then growing due Then &c.

No. CCXXX.

Annuity to a
Man and his
Wife.

No. CCXXXI.

Bond for securing an Annuity granted by a former Bond which has been lost.

No. CCXXXI.
Annuity Bond.

Know all &c.

Obligation.

Whereas the said (*obligor*) by his bond or writing obligatory under his hand and seal bearing date &c. became bound to the said (*obligee*) in the sum of £ and the said sum is conditioned to be void on payment by the said (*obligor*) his heirs executors or administrators to the said (*obligee*) of an annuity of £ for his life by half-yearly payments on &c. in every year and the said bond hath been inrolled pursuant to the statute in that

Recital of
former bond.

No. CCXXXI. behalf made and provided And all arrears of the said annuity
Annuity. have bee paid up and in full to the day of now last
 Loss of bond. past And *whereas* the said bond has been lost and it hath been
 agreed between the said (*obligor*) and the said (*obligee*) that a
 fresh bond to replace the one that hath been lost should be exe-
 cuted by the said (*obligor*) at the expense of the said (*obligee*)

Condition. Now &c. if the said (*obligor*) his heirs &c. do and shall from
 time to time during the life of the said (*obligee*) well and truly
 pay or cause to be paid unto the said (*obligee*) or his assigns one
 annuity or &c. of £ on &c. in every year by even &c. pay-
 ments clear of all deductions on any account whatsoever [the
 same to be in lieu and full satisfaction of the said annuity of
 £ granted or secured to the said (*obligee*) by the said
 (*obligor*) as hereinbefore mentioned or recited and all arrears and
 half-yearly payments thereof up to the day of now
 last past] and the first half-yearly payment of £ hereby
 granted or secured to become due on day of next
 ensuing the date of the above-written bond or obligation pro-
 vided the said (*obligee*) shall be living at the time or if the said
 hereinbefore recited bond or obligation shall at any time here-
 after be found or come to the hands of the said (*obligee*) or any
 other person as her agent or any action or suit at law shall be
 brought sued commenced or prosecuted under or by virtue of
 that bond or if it shall appear or be proved that any assignment
 hath been or shall be made by the said (*obligee*) of the benefit of
 that bond Then and in any or either of such cases this obliga-
 tion &c.

—◆—

*Bond to a Trustee for securing an Annuity to a Married Woman
 purchased with her separate Property, see post, BONDS (Mar-
 ried Woman).*

—◆—

Arbitration Bond, see ARBITRATION.

—◆—

Assignment of a Bond, see ASSIGNMENTS.

BAIL BONDS.

SECT. 1. The 23 Hen. 6, c. 9, requires, that when the defendant in a civil action is arrested, the sheriff should take bail with a security by bond or obligation, and therefore an agreement in writing, made by a third person with a sheriff's officer, to put in good bail for the defendant, is sufficient under this statute, Tidd's Pract. c. 11. When required.

2. As to the form of the bond, it is necessary that it should be made to the sheriff himself by name of office, and that it be conditioned for the defendant's appearance at the return of the writ, and for that only, *ib. ub. sup.* Form of the bond.

3. The bail bond is required to be upon a half-crown stamp. Stamp.

No. CCXXXII.

Common form of a Bail Bond.

Know all &c.

That we C. D. of &c. (*the defendant in the action*) E. F. of &c. and G. H. of &c. (*the bail*) are held and firmly bound to I. K. esquire sheriff of the county of _____ in the penal sum of £ (*double the sum sworn to and indorsed on the writ*) of lawful &c. to be paid to the sheriff or his certain attorney executors administrators or assigns for which payment we &c. see *Forms of the Obligation*, Nos. CCXXI. to CCXXIV.

The condition of the above-written obligation is such that if the above-bounden C. D. do appear (*a*) before our sovereign lady the Queen on _____ to answer A. B. of a plea of trespass (*b*) the

No. CCXXXII.

*Common Form
of a Bail Bond.*

Obligation.

Condition.

(a) If in the Common Pleas, say, "before her Majesty's Justices at Westminster on &c." If in the Exchequer, "before the Barons of her Majesty's Court of Exchequer at Westminster on &c."

(b) Or, according to the *ac etiam* in the process, if by original, say, "do appear &c. on &c. wheresoever &c. to answer A. B. of a plea &c." (*as the plea is*). If in the Exchequer, on a writ of *quo minus*, say, "to answer to A. B. the Queen's debtor of a plea of trespass whereby he is less able &c." Or, if on process of contempt, say, "to answer our sovereign lady the Queen of divers trespasses contempts &c. by him lately done and committed."

No. CCXXXII. said &c. Then this obligation to be void otherwise to remain in
Common Form full force and virtue
of a Bail Bond.

Signed sealed and delivered by the
 above-named C. D. E. F. and
 G. H. (being first duly stamped)
 in the presence of

C. D. (L. S.)
 E. F. (L. S.)
 G. H. (L. S.)

M. N.
 O. P.



No.
 CCXXXIII.
Special Bail
Bond.

No. CCXXXIII.
Special Bail Bond.

Obligation. *Know all &c.*

Recital of arrest. *Whereas* the above bounden (*obligor*) was on the day
 of taken by the sheriff by virtue of the Queen's writ of
capias issued out of her Majesty's Court of Queen's Bench (*or*
 "Common Pleas" *or* "Exchequer of Pleas") bearing date at
 Westminster the day of to the said sheriff directed
 and delivered against the said C. D. and &c. (*as in the writ*)
 at the suit of A. B. *And whereas* a copy of the said writ to-
 gether with every memorandum or notice subscribed thereto and
 all indorsements thereon was on the execution thereof delivered
 to the said C. D. *And whereas* he is by the said writ required
 to cause special bail to be put in for him in the said court to the
 said action within eight days after execution thereof inclusive of
 the day of execution

Condition. *Now &c.* That if the said C. D. do cause special bail to be
 put in for him to the said action in her Majesty's said court
 as required by the said writ Then &c. Sealed &c.



No.
 CCXXXIV.
Assignment of
Bail Bond.

No. CCXXXIV.

Assignment of the Bail Bond (by Indorsement).

Obs. As to the assignments of bonds, see ASSIGNMENTS, Pref.
 sect. 2.

I the within named sheriff of have at the request of
 A. B. the plaintiff also within named assigned to him the said
 A. B. the within written bail bond and all benefit and advantage
 arising therefrom pursuant to the statute in that case made and

provided *In witness* whereof I have hereunto set my hand
and seal of office this day of

No.
CCXXXIV.
*Assignment of
Bail Bond.*

Signed sealed and delivered by
the within named sheriff in the
presence of

S. S. Sheriff

W. W.
T. W.

Common Form of a Bottomry Bond, see post, SHIPPING.

No. CCXXXV.

No. CCXXXV.
*Conveyance by
Infant.*

Bond that an Infant, when of full Age, shall convey.

Obs. As to conveyances by infants under the direction of the Court
of Chancery, see PURCHASES, Pref. sect. 3.

Know all men &c.

Obligation.

Whereas T. S. late of &c. deceased by his last will and
testament in writing bearing date on or about the day of

Recital of will.

Did [among other things] give and devise all his free-
hold and copyhold messuages or tenements lands and here-
ditaments to be equally divided between his sons the above
named (*obligors*) and (*infant*) *And whereas* the above named
(*purchaser*) hath contracted with the said (*obligors*) for the pur-
chase by him of the said messuages &c. *And whereas* the said
(*obligors*) by indentures of lease and release the lease (see *post*,
RECITALS) bearing date the day before and the release even date
herewith Did convey unto the said (*P.*) his heirs and assigns
the said freehold messuages in which conveyance is contained
a covenant by a surrender or surrenders or other customary
assurances to assure the said copyhold hereditaments unto the
said (*P.*) *And whereas* the said (*infant*) is an infant of the age
of years or thereabouts and the part or share of the said
(*infant*) of and in the purchase money in the said indenture of
release expressed to be paid to him was paid to him notwith-
standing his infancy with the consent of the said (*obligors*)
And whereas upon the treaty for the purchase of the said free-
holds and copyholds it was agreed that the said (*obligors*) should
by their bond guarantee unto the said A. B. his heirs appointees

Contract for
purchase.

Agreement to
enter into a
bond.

No CCXXXV. and assigns a confirmation of the conveyance and assurance
Conveyance by and covenant to surrender by the said in part recited indenture
Infant. expressed to be made by the said (*I.*) And should in the mean
time secure unto the said A. B. his appointees and assigns the
quiet possession and enjoyment of the same freehold and copy-
hold hereditaments as against the said (*I.*) and his heirs and those
claiming under him or them in manner hereinafter mentioned

Condition.

Now the Condition of the above written bond or obligation is
such That if the said (*I.*) do and shall when and so soon as he
shall have attained the age of twenty-one years at the costs and
charges of the said A. B. by such deeds and conveyances as the
counsel of the said A. B. shall approve of convey surrender and
assure unto the said A. B. his heirs appointees and assigns or as
he or they shall direct or appoint all the part or share in fee
simple of the said (*I.*) of and in the said freehold and copyhold
hereditaments mentioned and comprised in the said in part re-
cited indenture of release bearing even date with the above
written bond or obligation freed and discharged from all incum-
brances previously made by the said (*I.*) *And also* if in the
mean time and until such conveyance surrender and assurance
the said A. B. his heirs appointees and assigns do and shall from
time to time and at all times peaceably and quietly have hold
occupy possess and enjoy the said freehold and copyhold here-
ditaments mentioned and comprised in the said in part recited
indenture without any let suit trouble demand eviction or dis-
turbance of from or by the said (*I.*) his executors administrators
or assigns or any person or persons claiming &c. Then &c. see
ante, General Precedent.



No.
CCXXXVI.

Debt.

No. CCXXXVI.

*Bond to secure a Debt by Cognovit in an Action brought, and by
Insurance of the Obligor's Life, in which the Father joins.*

Obligation.

Know all Men, &c.

Recitals.

Whereas the above bounden I. M. the younger is and standeth
justly indebted unto the above named T. S. in the sum of
£ for money lent and advanced *And whereas* for recovery
of the said debt T. S. hath commenced an action at law against
the said I. M. the younger in her Majesty's Court of Common
Pleas at Westminster *And whereas* the said I. M. the younger
hath since applied to the said T. S. and requested him to suspend

Debt and
action.

any further proceedings in the said action and hath proposed to confess the same by *cognovit* under his hand with liberty for the said T. S. to enter up judgment thereon in case default shall be made in payment of the said debt with interest and costs according to the condition hereinafter expressed *And* also that he the said I. M. the younger would at his own costs and charges insure the said sum of £ upon his own life at the

office at London and keep the same so insured until payment of the said debt with interest thereon and that in case of his death before the said debt and interest shall be so discharged the said T. S. should have full benefit and advantage of such insurance and that the policy thereof should be taken out in the name of and for the said T. S. and be deposited with him *And* that when the said debt and interest should be paid and discharged then that the said policy and all benefit thereof should be delivered up and vested in the said I. M. the younger upon his payment of any sums of money to the said I. M. the elder which he shall or may have advanced and paid to the said T. S. in virtue of these presents *And* hath further proposed that the said I. M. the elder should become jointly bound with him the said T. S. in manner hereinafter mentioned to all which the said T. S. hath agreed and having suspended all proceedings in the said action the said I. M. the younger hath on the day of the date of the above written obligation signed a *cognovit* as hereinbefore proposed and hath commenced such insurance and hath deposited with the said T. S. the policy as hereinbefore agreed

No.
CCXXXVI.
Debt.

Agreement to
sign cognovit.
To insure life of
obligor.

Now therefore the Condition &c. see ante, General Precedent Condition.
That if the above bounden I. M. the elder and I. M. the younger or either of them their or either of their heirs executors or administrators shall pay or cause to be paid unto the said T. S. his executors administrators or assigns the sum of £ with interest at the rate of £ per cent. per annum on the decease of either of them the said I. M. the elder or I. M. the younger which shall first happen and shall in the mean time pay or cause &c. unto the said T. S. his executors administrators and assigns interest for the same at or after the rate aforesaid by half-yearly payments on the day of and day of in each year commencing from the day of the date of the said obligation and shall at the proper costs and charges of him the said I. M. the younger pay or &c. at the said insurance office the annual premium for the insurance so commenced as aforesaid

No.
CCXXXVI.
Debt.

from time to time and every year until the said debt and interest as aforesaid shall be wholly discharged *And also* in case of the decease of the said I. M. the younger if he the said T. S. his executors administrators or assigns shall be permitted and suffered without any hindrance delay or interruption of from or by any person or persons whomsoever to receive and take to his own use and benefit all and every sum or sums of money benefit emolument and advantage which shall or may then accrue or have become payable and recoverable upon or by virtue of the said policy of insurance of or from the said assurance company or any person or persons whomsoever it shall or may concern to pay the same in full liquidation discharge and satisfaction of the said debt and interest at that time due to the said T. S. his executors administrators or assigns Then &c. see *ante*, *General Precedent*.

Bond for the payment of Money, see post, BONDS (PAYMENT).

No.
CCXXXVII.
*Indemnity
(Attorney's
Clerk.)*

No. CCXXXVII.

*Bond by Clerk and Surety for the faithful Service of an
Attorney's Clerk or Assistant.*

Obligation.
Recitals.

Know all &c.

Whereas the above bounden (*obligor*) is about to enter into the service of the said (*obligee*) as his clerk and assistant in the management of the business or profession of the said (*obligee*) of an attorney solicitor and conveyancer for and during such period as the said parties shall mutually agree he the said (*obligee*) paying unto the said (*obligor*) at or after the rate of £ per annum *And whereas* the said (*surety*) hath consented to join with the said (*obligee*) in the above-written obligation as a security and protection to the said (*obligee*) his executors &c. of from and against all loss or damage that might be sustained by the said (*obligee*) by reason of the said (*obligor*) not duly accounting with the said (*obligee*) for all monies which may come to his hand or on account of the embezzlement misappropriation conversion or wilful defacement by the said (*obligor*) of any deeds writings evidences or effects whatsoever which shall come into the hands or possession of the said (*obligor*)

Now the Condition &c. That if the above-bounden (*obligor*) and (*surety*) their respective heirs executors or administrators or some or one of them do and shall from time to time and at all times hereafter well and truly account to and with the said (*obligee*) his executors and administrators of and for all monies property and things which shall or may come into the possession custody or power of him the said (*obligor*) as the clerk and assistant of the said (*obligee*) And do and shall at all times when required pay over to the said (*obligee*) his executors administrators or assigns all and every sum and sums of money which shall on any account be or appear to be coming due to him from the said (*obligor*) And do and shall save protect keep harmless and indemnified the said (*obligee*) his executors administrators and assigns of from and against all embezzlement misappropriation misapplication and conversion by the said (*obligor*) to the use of the said (*obligor*) of any monies goods chattels and effects belonging to the said (*obligee*) his executors administrators or assigns or to any suitor or client And also of and from and against all defacements and cancelling or mutilation by the said (*obligor*) without the knowledge or consent of the said (*obligee*) or of any person duly authorized by him of any deeds writings evidences instruments books or papers of any description whatsoever which shall belong to the said (*obligee*) his executors or administrators or any suitor or client who shall have deposited the same with the said (*obligee*) or the said (*obligor*) as his clerk And if the said (*obligor*) shall and do well and faithfully in all things serve the said (*obligee*) as his assistant in the practice or profession of an attorney solicitor or conveyancer as aforesaid Then &c.

No.
CCXXXVII.
Indemnity
(Attorney's
Clerk.)

Condition.

No. CCXXXVIII.

Another Form for a Merchant.

Now the Condition of such obligation is such That if the above bounden (*Clerk*) shall at all times hereafter so long as he the said (*C.*) shall continue in the service of and be employed by the above-named (*Principal*) as his clerk or servant well faithfully and truly serve the said (*P.*) his master without consuming wasting embezzling losing mis-spending misapplying or unlawfully making away with any of the monies goods chattels wares merchandizes or effects whatsoever of the said (*P.*) his master or of

No.
CCXXXVIII.
Indemnity
(Merchant's
Clerk.)

Condition.

No.
CCXXXVIII.
Indemnity
(Merchant's
Clerk.)

any other person or persons whomsoever for which he the said (P.) his heirs executors or administrators shall or may by any law custom or usage whatsoever be anywise answerable or responsible which shall be committed to his the said (C.'s) charge care custody or keeping by reason or means of his said service or being clerk as aforesaid Or if the said (C.) and (*surety*) or one of them the said (P.) his executors or administrators neglect or refuse to account with him the said (P.) his executors administrators or assigns weekly or oftener if thereunto required by the said (P.) his executors administrators or assigns by reasonable notice in writing under his or their hands for that purpose to be given Then if the said (C.) his heirs executors or administrators do and shall within months next after due proof thereof either by confession or otherwise make good and sufficient recompense satisfaction and payment unto the said (P.) his executors administrators or assigns for the said monies goods chattels wares merchandize or effects of him the said (P.) so lost wasted mis-spent or misapplied as aforesaid And also for all such loss damage or charge as he the said (P.) his executors or administrators shall suffer sustain or be put unto for or by reason or means of his the said (C.'s) neglecting or refusing to account as aforesaid Then &c.

No.
CCXXXIX.
Indemnity
(Partnership
Accounts.)

No. CCXXXIX.

Bond for Performance of the Covenants in a Deed of Copartnership by one who is admitted as a New Partner.

Know all &c.

Recitals of
copartnership
deed.

Whereas by indenture dated and made between A. G. son of the above mentioned H. G. of &c. of the first part the said J. P. of the second part and the said F. E. of the third part the said A. G. J. P. and F. E. did thereby agree to be partners in the trade or business of a brewer and in the buying of barley and all other things belonging to the said business from the day of for the term of years from thence next ensuing determinable as therein is mentioned the said business to be conducted at &c. under the names and firm of A. G. & Co. or of &c. as therein is mentioned *And* it was by the said indenture agreed that they the said J. P. and F. E. their executors or administrators from time to time as the same should be necessary should pay and advance in equal proportions so much money as would

be sufficient to carry on the said business with proper vigour and effect not exceeding the sum of £ unless two of the said parties should be desirous to increase the same and in that case not to exceed £ unless with consent of all the said parties and that the said partnership should be managed and carried on under the terms provisions covenants and agreements therein declared and contained *And whereas* the said H. G. previous to the execution of the above-mentioned indenture agreed with the said J. P. and F. E. to enter into and execute the above written bond

No.
CCXXXIX.
Indemnity
(*Partnership*
Accounts.)

Agreement by
father to give
a bond.

Now &c. That if the said A. G. shall well and faithfully perform fulfil and keep all and every the terms provisions covenants and agreements in the said indenture contained and agreed to be by him performed and done and if the said H. G. his heirs executors or administrators shall from time to time and at all times hereafter save defend keep harmless and indemnified the said J. P. and F. E. and each of them their and each of their heirs executors and administrators of from and against all losses costs charges and expenses which they or any of them shall or may sustain or be put unto for or by reason or means or on account of the non-performance of all or any of the terms provisions covenants and agreements in the said indenture contained and agreed to be by him the said A. G. performed and done so and in such manner that the said H. G. shall or may be answerable to the said J. P. and F. E. and their respective executors and administrators for such losses costs charges and expenses in such and the same degree as if he the said H. G. had been a party to the said indenture and had been thereby constituted a partner in the said joint business in the place and stead of the said A. G. and had entered into the covenants and agreements therein contained on the part of the said A. G. and no further
Then &c.

Condition.

No. CCXL.

No. CCXL.

*Another Bond of Indemnity against old Partnership
Accounts, &c.*

Know all &c.

Obligation.

Whereas by articles of agreement of five parts bearing even date with the above-written obligation the above-mentioned A. B. and the said C. D. E. F. G. H. and H. I. have agreed to

Recitals of
copartnership
articles.

No. CCXL.
Indemnity
(Partnership
Acconnts.)

Agreement to
 enter into bond.

Sureties pro-
 posed and ap-
 proved,

Condition.

become partners in the business of banking upon the terms therein mentioned *And whereas* on the treaty respecting the said partnership the said A. B. hath proposed and agreed at the time of the execution of the said articles to give unto the said other parties the bond of himself and two other persons for the purpose hereinafter mentioned *And whereas* the said A. B. hath proposed I. C. and H. B. as the two persons to be joined with the said A. B. who have been approved by the said other parties

Now &c. That if the said A. B. I. C. and H. B. or some or one of them their or some or one of their heirs executors or administrators do and shall from time to time and at all times hereafter well and sufficiently protect save harmless and keep indemnified the said C. D. &c. and each and every of them and each and every of their executors administrators and assigns and each and every of their lands tenements goods and chattels and also the estate and effects of the said copartnership from and against all such actions costs losses charges damages and expenses which may at any time or times hereafter be instituted or commenced prosecuted or made against them the said C. D. &c. or against the lands &c. of them the said C. D. &c. or any of them or against the estate and effects of the said copartnership or which they the said C. D. &c. or any of them may hereafter bear pay or be put unto or become subject or liable to by reason of any of the debts contracts or engagements of him the said A. B. in respect of his late partnership with *And also* shall answer and make good unto the said C. D. &c. their executors administrators and assigns and to the estate of the said partnership the share and proportion of him the said A. B. under the before recited articles of all such losses costs damages and expenses which the said copartnership estate may from time to time during the continuance of the same suffer or sustain by any debt or debts which may be incurred by such copartnership or by any other means or in any other manner howsoever *And also* if the said A. B. his executors or administrators shall in all things well and truly perform fulfil and keep all and every the covenants clauses articles and agreements entered into by the said A. B. on his part to be fulfilled performed and kept according to the true intent and meaning thereof *And* shall from time to time and at all times hereafter well and sufficiently protect &c. the said C. D. &c. or any of them their or any of their lands &c. and also the effects and property of the said copartnership from and against all such

charges losses damages expenses and demands which they may at any time hereafter bear &c. by reason of the breach of the said articles aforesaid *Then* &c.

No. CCXL.
Indemnity
(*Partnership*
Accounts.)

No. CCXLI.

Bond of Indemnity against the Rents and Covenants in a Lease.

No. CCXLI.
Indemnity
(*Rents and*
Covenants.)

Obs. A lessee, notwithstanding his assignment, continues liable for the payment of rent and performance of covenants, but the liability of an assignee is determined by his quitting possession, *Taylor v. Shum*, 1 B. & P. 21; unless where he is bound by his covenant or bond.

Know all &c.

Obligation.

Whereas &c. (*recite lease*) *And whereas* by a certain indenture bearing even date with the above-written obligation and made between the above-named (*assignor*) of the one part and the above-bounden (*assignee*) of the other part the said (*assignor*) For the considerations therein mentioned did assign and make over the said messuage and premises comprised in the said in part recited indenture Subject to the payment of the rent reserved by the said lease and to the observance and performance of the covenants agreements stipulations and clauses therein contained which on the tenant or lessee's part are or ought to be paid done kept and performed *And whereas* upon the treaty for the said sale it was agreed that the above-written obligation should be entered into for the security of the said (*assignor*) with the condition hereunder written for making void the same.

Recitals.

Assignment.

Now &c. That if the above-bounden (*assignee*) his heirs executors or administrators do and shall from time to time and at all times well and truly pay or cause to be paid the rent or rents by the said in part recited indenture of lease reserved or made payable from or after the day of last past And do and shall observe perform and keep all and every the covenants which on the part or behalf of the (*lessee*) therein named his executors administrators or assigns are or ought to be observed &c. And also do and shall save harmless and keep indemnified the said (*assignor*) of from and against all and every sum and sums of money costs charges and expenses which he or they or any of them shall pay sustain or be pnt unto for or by reason of

Condition.

No. CCXLI.

*Indemnity
(Rents and
Covenants.)*

the nonpayment of the said rent or rents or any part of the same or of the breach or non-observance of the said covenants agreements stipulations and clauses in the said lease contained or any of them Then &c.



No. CCXLII.

*Indemnity
(Non-production
of Deeds.)*

No. CCXLII.

Bond of Indemnity against all Damages which may be sustained on account of the Non-production of a certain Deed.

Obligation.

Know all &c.

Recital of lease.

Mesne assignment.

Whereas by indenture of lease &c. (*recite lease*, see *Assignment of Lease*) *And whereas* by divers mesne assignments &c. particularly by an indenture of lease &c. (*recite assignment to the obligor*) *And whereas* (*recite sale by auction and that the said obligee was the purchaser*) *And whereas* by indenture of &c. (*recite assignment to obligee*) *And whereas* previously to the execution of the said indenture of assignment it was discovered that the said indenture of assignment bearing date the day of and made between &c. was either lost or mislaid and the said (*obligee*) at the request of the said (*obligor*) hath agreed to pay the purchase-money upon the said (*obligor*) entering into the above-written bond.

Lost deed.

Condition.

Now &c. That if the above-bounden (*obligor*) do and shall from time to time and at all times hereafter save harmless and keep indemnified the said (*obligee*) his heirs executors and administrators his and their lands &c. of and from all costs charges damages and expenses which the said (*obligee*) his heirs executors administrators or assigns shall or may bear be at or put unto on account of the said indenture of assignment being lost or on account of the said (*obligee*) being deprived of the custody of the same And if at any time hereafter the said deed of assignment shall be found and be delivered to the said (*obligee*) his executors administrators or assigns whole and uncanceled Then &c.



No. CCXLIII.

*Indemnity
(Loss of Title
Deeds.)*

No. CCXLIII.

Bond of Indemnity from a Vendor to a Purchaser where Title Deeds were lost.

Obligation.

Know all &c.

Recital of purchase.

Whereas by indenture bearing even date with but executed before the above obligation and made between For the

considerations therein mentioned certain messuages or tenements &c. situate at in the were conveyed unto the said (*Purchaser*) his heirs and assigns but the title deeds or evidences of title to the said premises being lost or mislaid the said (*Vendor*) hath agreed to save harmless and keep indemnified the said (*P.*) his heirs and assigns against all persons claiming any right or title to the said premises or any part thereof in manner herein-after expressed And also that in case the said title deeds and evidences of title to the said premises shall at any time hereafter be found the same shall be delivered to the said (*P.*) his heirs or assigns whole and uncanceled.

No. CCXLIII.
Indemnity
(Loss of Title
Deeds.)

Now &c. That if the said (*V.*) his heirs executors administrators or assigns do and shall from time to time and at all times hereafter save harmless and keep indemnified the said (*P.*) his heirs executors administrators and assigns of from and against all mortgages and other charges and incumbrances anywise affecting the said messuages &c. and premises and against all and every person and persons whomsoever claiming any estate right or title of in or to the same or any part thereof And if the said title deeds and evidences forming a complete and perfect title to the said premises shall at any time be delivered up to the said (*P.*) his heirs or assigns whole and uncanceled without fraud or delay Then &c.

Condition.

No. CCXLIV.

Bond of Indemnity on the Mortgage being paid off on Account of the Loss of the Mortgage Deeds.

No. CCXLIV.
Indemnity
(Loss of Mortgage
Deeds.)

Know all &c.

Obligation.

*Whereas (recite original mortgage deducing title to the testatrix And that testatrix appointed above-bounden obligor her son and heir at law to be her sole executor) And whereas (recite the will of the mortgagor whereby he devised all his real estates to the above-named obligees in trust to sell the same and discharge the mortgage) And whereas (recite re-conveyance from the said obligor to the said obligee as trustee of even date with the above obligation) And whereas the several deeds or writings hereinbefore recited [except the lease for a year upon which the said recited indenture of mortgage was grounded] have been accidentally lost or mislaid And it was therefore agreed that the said (*obligor*) should enter into the above-written bond &c.*

Recitals.

No. CCXLIV. *Now &c.* If the said (*obligor*) his heirs &c. do and shall from
Indemnity
(Loss of Mort-
gage Deeds.) &c. hereafter save &c. (see last *Precedent*) the said (*obligees*) their
 heirs executors administrators cestuique trust and assigns of from
 and against (*a*) all manner of actions suits and proceedings what-
 soever at law or in equity which shall or may be brought &c.
 against the said (*obligees*) their &c. And if the said mortgage
 deeds shall at any time be found and the same be delivered up
 to the said (*obligees*) (*b*) without fraud or delay Then &c.



No. CCXLV.

Indemnity
(Surety.)

No. CCXLV.

*Bond to indemnify a Surety against the Penalties of
 a former Bond.*

Obs. Without a bond of this description, called a counter-bond, a
 surety who pays the debt of his principal is considered merely as a
 simple contract debtor.

Obligation.

Know all &c.

Recitals.

Whereas the above-named (*Surety*) at the request of the above-
 bounden (*Obligor*) is in and by a certain bond or &c. bearing
 even date herewith together with the said (*O.*) held and firmly
 bound unto E. F. of &c. in the penal sum of £ being the
 only proper debt of the said (*O.*) with a condition thereunder
 written for making void the same as in and by the said in part
 recited obligation and condition reference being thereto had will
 more fully appear *And whereas* the said (*O.*) hath agreed to
 execute the above-written obligation for indemnifying the said
 (*S.*) by reason of his having become surety as aforesaid

Condition.

Now &c. That if the above-bounden (*O.*) his heirs executors
 or assigns do and shall pay or cause to be paid unto the said
 E. F. his executors &c. the sum of £ with interest for the
 same on the day of next ensuing the date of the
 said recited obligation according to the true intent and meaning
 of the condition thereunder written and if the said (*O.*) his heirs
 &c. shall from time to time and at all times hereafter save pro-

(*a*) In the case of title deeds, say, "against all mortgages and other charges
 and incumbrances anywise affecting the said messuages and premises and against
 all and every person and persons whomsoever claiming any estate right or title
 in or to the same or any part thereof."

(*b*) In the case of title deeds, say, "whole and uncanceled without fraud or
 delay."

tect and keep harmless and indemnify the said (S.) his heirs executors administrators and assigns and his and their estate and effects of from and against all costs charges and damages which he or they shall or may at any time hereafter sustain or be put unto by reason or on account of the said in part recited bond or obligation or any matter or thing relating thereto Then &c.

No. CCXLV.

Indemnity
(Surety.)

No. CCXLVI.

Bond to indemnify against paying Rent where the Title is in Question.

No. CCXLVI.

Indemnity
(Payment of
Rent.)

Know all &c.

Obligation.

Whereas there is a suit depending between the above-bounden (*obligor*) and others touching the right and interest in the dwelling-house of the said (*obligee*) situate &c. And whereas the said (*obligee*) hath agreed to pay the rent of the said house to the said (*obligor*) yearly as the same shall grow due upon his agreeing to indemnify him therefrom

Recital of
suit.

Now &c. if the said (*obligor*) his &c. do and shall well and truly pay &c. all such rent sum and sums of money charges and damages whatsoever as shall by due proceedings in law be adjudged or decreed against him the said (*obligee*) his &c. and all other costs and damages whatsoever which he the said (*obligee*) his executors &c. shall sustain or be at by reason of any action suit or forfeiture whatsoever which shall or may happen to the said (*obligee*) his executors administrators or assigns by reason of paying the said rent or any part thereof to the said (*obligor*) his executors administrators or assigns in manner aforesaid Then &c.

Condition.

No. CCXLVII.

Bond to indemnify the Purchaser of an Estate against Mortgage Money, where no Evidence can be obtained of its having been paid off.

No. CCXLVII.

Indemnity
(Payment of
Mortgage
Money.)

Know all &c.

Obligation.

Whereas &c. (recite mortgage deed and other deeds affecting the estate) And whereas from the recitals contained in the indenture of release of the day of and the length of time since the dates and executions of the said recited indentures of the

Recital of
deeds.

No. CCXLVII. day and the day &c. there is ground to presume
Indemnity that the sum of £ by the indenture &c. secured unto the
(Payment of said (*mortgagee*) by way of mortgage as aforesaid together with
Mortgage all interest upon or in respect of the said sum of £ has been
Money.) long since paid off or satisfied but no positive evidence of such
 payment and release can be obtained at present It was therefore
 agreed upon the treaty for the aforesaid purchase that the said
 (*P.*) should be indemnified by the said (*V.*) against the principal
 sum of £ and all interest as aforesaid

Condition. *Now* &c. That if the above-bounden (*obligor*) do and shall well
 and sufficiently save harmless &c. the said messuages lands &c.
 comprised in and expressed to be released by an indenture of
 release bearing even date with the above-written bond And the
 said (*P.*) and his heirs &c. in respect thereof of from and against
 the said sum of £ and the interest thereof and every part
 thereof and of from and against all actions and suits at law or in
 equity which shall be brought &c. and all costs &c. in respect
 of the said sum of £ and interest as aforesaid and for or on
 account of any act matter or thing in anywise relating thereto
 Then &c.

No.
CCXLVIII.

Indemnity
(Lost Bond.)

Obligation.

Recitals of lost
bond.

No. CCXLVIII.

Bond of Indemnity on paying a Lost Bond.

Know all &c.

Whereas the above-named master and wardens and society by
 their bond or obligation under their common seal bearing date
 &c. became bound to the above-named (*obligee*) in the penal sum
 of £ conditioned for the payment of the sum of £
 unto the executors administrators or assigns of the said (*obligee*)
 at the end of months next after the decease of the said
 (*obligee*) with such profits upon the same as upon the then last
 general audit for the stock raised by and among the members of
 the said society for the making and preparing &c. should appear
 to be due to him and unpaid as in and by the said bond when
 produced will more fully appear *And whereas* the said bond is
 alleged to be lost or so mislaid that the same cannot be found
 And whereas the said master wardens and society on the day of
 the date hereof at the request of the said (*obligor*) and on his
 promise of indemnity have made him full satisfaction of and for
 the said bond

Satisfaction of
the bond.

Now &c. That if the above bounden (*obligor*) his heirs executors or administrators or any or either of them do and shall in case the said bond or obligation shall happen to be found or come to the hands custody or power of him them or any of them or of any other person for them deliver or cause the same to be delivered unto the then master and wardens of the said society in order to be made void cancelled and destroyed and also shall and do from time to time and at all times hereafter save and keep harmless &c. the said master wardens and their successors of and from &c. for or by reason of the said bond or obligation or any of the money thereby paid or for touching and concerning the same in anywise howsoever Then &c.

No.
CCXLVIII.
Indemnity
(*Lost Bond.*)
Condition.

—◆—

No. CCXLIX.

No. CCXLIX.
Indemnity
(*Lost Bill.*)

Bond to indemnify a Person from a Bill that is Lost, upon his granting another.

Obs. By the 8 & 9 Will. 3, c. 17, s. 3, the drawer of a bill may be required, in case it be lost, to give another bill on his being indemnified.

Know all &c.

Obligation.
Recital of loss
of bill.

Whereas the above-named (*obligee*) drew a bill No. dated &c. on Messrs. A. & Co. for the sum of £ payable to the order of E. D. which said note was afterwards paid to L. & Co. and hath since by them been lost or mislaid *And whereas* the said (*obligee*) at the request of the said L. & Co. hath given them another bill of the same value and tenor as the bill so lost on their indemnifying him &c. against all claims and demands to be made upon him in respect of the said lost bill

Another bill
given.

Now &c. That if the above-bounden L. & Co. or either of them or either of their heirs executors administrators or assigns do and shall at all times hereafter save and keep harmless and indemnified the said (*obligee*) his executors &c. and every of them and every of their lands tenements goods and chattels whatsoever of and from the payment of the same bill and of and from all and all manner of actions suits claims and demands whatsoever for or on account of the same bill and of and from all damages costs and charges whatsoever which he or they may at any time hereafter sustain bear or be put unto by reason or means of the non-payment of such lost bill And if the said L. & Co. do and shall when and as soon as the said note shall be found deliver the same to the said (*obligee*) Then &c.

Condition.

No. CCL.

Indemnity
(Charges under
a Will.)

Obligation.

Recitals of
will, &c.

Condition.

No. CCL.

Bond of Indemnity to a Purchaser against Two Legacies and an Annuity charged on Hereditaments which the Devisee has contracted to Sell.

Know all &c.

Whereas &c. (recite the will of R. P. whereby he bequeathed two legacies of £ each to his two grandchildren S. P. and T. P. upon their attaining their age of twenty-one and an annuity of £ a year to his brother H. P. and that the said testator charged the said legacies and annuity upon the hereditaments thereafter devised to his son J. P. in fee) And whereas the said (Purchaser) hath contracted with the said (Vendor) for the absolute sale to him of all &c. and the same pieces or parcels of land hereditaments and premises have been duly conveyed to the said (P.) his heirs and assigns in and by certain indentures of lease and release bearing date respectively the lease the day next before and the release even date herewith And whereas upon the treaty for such purchase it was agreed by and between the said (V.) and (P.) that the said (V.) should enter into the above-mentioned bond by way of indemnity to the said (P.) against the two said legacies of £ and £ and the said annuity of £ so given and bequeathed by the said will with a condition for making void the same as hereinafter is expressed

Now &c. That if the said (V.) his heirs executors and administrators shall pay or cause to be paid to the said S. P. and T. P. when they shall respectively attain the age of twenty-one years the said legacies or sums of £ and £ and interest according to the direction of the said will and shall at the costs and charges of the said (V.) his heirs and assigns produce and show to the said (P.) his heirs and assigns good and effectual receipts and discharges for such legacies duly signed by the said S. P. and T. P. after they shall have attained their respective ages of twenty-one years and shall at the like costs and charges give to the said (P.) his heirs and assigns true and attested copies of such receipts and discharges if he or they shall request the same And shall pay to the said H. P. the said testator's brother the said annuity of £ when the same shall from time to time become due and payable And shall from time to time and at all times hereafter save defend keep harmless and indemnified the said (P.) his heirs and assigns and his and their

lands tenements goods &c. particularly the said hereditaments and premises so purchased by the said (P.) as aforesaid of from and against all actions suits at law or in equity claims demands ejectments and evictions by reason or on account of the said two legacies &c. and all interest which hath accrued or may accrue due thereon and of from and against the said annuity of £ so bequeathed as aforesaid and also of from and against all costs charges and expenses which he or they may sustain expend or be put unto for or in respect of such the said legacies &c. or the said annuity &c. or of either of them or of any matter or thing relating thereto Then &c.

No. CCL.
Indemnity
(Charges under
a Will.)

No. CCLI.

Joint and several Bond of Indemnity on the Sale of an Estate.

Know all &c.

Whereas by indenture bearing date &c. divers lands and hereditaments situated at _____ were granted and conveyed to the above bounden (*Obligors*) in consideration of the sum of £

And whereas in consideration of the sum of £ _____ paid to the said (O.) before the date of the above written bond or obligation the receipt whereof they the said (O.) do hereby acknowledge and in pursuance of an agreement in writing bearing date and entered into with them the said (O.) they the said (O.) have agreed to enter into the above written bond &c. subject to the condition hereinafter contained

Now &c. if the said (O.) or either of them their or either of their heirs executors and administrators do and shall from time to time and at all times hereafter at his and their own costs and charges save and defend keep harmless and indemnified the said (*Purchaser*) his heirs appointees executors administrators or assigns and every of them and his and their and every of his and their lands tenements goods chattels and effects and in particular the said manor &c. hereinbefore described of from and against all and all manner of ejectments evictions suits at law or in equity debts payments costs losses charges damages and expenses which from time to time or at any time or times hereafter shall or may be brought sued or prosecuted against or incurred paid and sustained by the said (P.) his heirs &c. by reason of any entry or entries claim or claims to be made in any suit at law and in equity against the said (P.) by any person or

No. CCLI.
Sale.

Obligation.

Recital of conveyance.

Agreement to enter into bond.

Condition.

No. CCLI.
Sale.

persons whomsoever in respect of the said manor or by reason of any defect of title [if any exist] and if the said (O.) or one of them do and shall in the event that the said (P.) his heirs &c. for the want of a title to the said manor &c. or any part of the same shall be evicted in any suit at law or in equity pay or cause to be paid to the said (P.) his heirs &c. any sum which shall be the then value of the said manor &c. to be estimated by two indifferent persons one to be appointed by the said (O.) their heirs &c. and the other by the said (P.) his heirs &c. or in case they cannot agree then by such person as they shall appoint or in case either party shall refuse or neglect to appoint an arbitrator then by the referee of the other party Then &c.



No. CCLII.

No. CCLII.

Indemnity
(Trustees.)

Bond of Indemnity to Trustees under the Obligor's Marriage Settlement for having permitted him to convert Trust Monies to his own use.

Obligation.

Know all &c.

Recitals.

Whereas &c. (recite marriage settlement) And whereas the said (Obligees) trustees named in the said recited indenture of settlement have at various times at the request of the said (Obligor) authorized him to sell and dispose of certain parts of the said sum of £ 3 per cent. Consolidated Bank Annuities and in pursuance of the power so given him he hath converted the monies which have arisen therefrom to his own use And whereas the said (obligees) have applied to the said (obligor) for the re-investment in their names of the said sum of £ so disposed of as aforesaid And it being inconvenient to the said (obligor) to comply with such request he hath proposed if the said (obligees) will allow him a reasonable time for the re-investment of the same sum to indemnify them in the mean time by executing the above written obligation

The sale.

Condition.

Now &c. if the said (obligor) shall save defend keep harmless &c. the said (obligees) their and every of their heirs executors &c. lands &c. and also the heirs of the said A. B. deceased of &c. by reason or means or on account of the said (obligees) or any of them having authorized the sale and transfer by him the said (obligor) of the said sum of £ or any part thereof or for or by reason or on account of the said (obligor) not having in-

vested or replaced the same £ &c. in the names of them No. CCLII.
the said (*obligees*) in the books of the Governor &c. of the Bank Indemnity
of England or for or by reason or means of any act matter or (*Trustees.*)
thing in anywise relating to the premises Then &c.

No. CCLIII.

*Bond from a Father to pay a Sum for his Daughter's Fortune
within a certain Time after the Marriage.*

No. CCLIII.
Daughter's
Fortune.

Know all &c.

Obligation.

Whereas a marriage hath been agreed upon and is intended soon to be had and solemnized between (*Intended Husband*) of &c. and (*Intended Wife*) spinster daughter of the above bounden (*Father*) by M. B. his wife And whereas the said (*F.*) upon the treaty for the said marriage proposed and agreed to secure the sum of £ as and for the portion or fortune of the said (*I. W.*) his daughter to be paid to the above named M. B. and G. W. at or before the end of months next after the said intended marriage with interest for the said sum of from the solemnization thereof at the rate of 4*l.* for 100*l.* by the year Upon Trust and for the intents and purposes hereinafter mentioned

Recital of in-
tended mar-
riage.

Agreement.

Now &c. That if the said intended marriage shall not be had and solemnized or if the said intended marriage shall be had and solemnized and the said (*F.*) his executors or administrators do and shall in such case pay or cause to be paid unto the said M. B. and G. W. their executors administrators or assigns the sum of £ at or before the end of months next after the said intended marriage shall be had and solemnized with interest for the said sum of £ from the said solemnization at the rate &c. without any deduction or abatement whatsoever Upon such Trusts for such intents and purposes and with under and subject to such powers provisoes agreements and declarations as are or shall be declared and expressed concerning the same sum of £ with interest in and by an indenture already prepared and engrossed and bearing or intended to bear even date with the above written bond or obligation and made or expressed to be made between (*I. H.*) of the first part the said (*T.*) and (*I. W.*) of the second part and the said M. B. and G. W. of the third part Then &c.

Condition.

No. CCLIV.

Married
Woman.

No. CCLIV.

*Bond to a Trustee for securing Annuity to a Married Woman
purchased with her separate Estate.*

Obs. This requires an *ad valorem* stamp as on the grant of annuity, see *ante*, ANNUITY.

Obligation.

*Know all &c.*Recital of be-
quest to the
separate use
of wife.

Whereas under and by virtue of the last will and testament of S. M. deceased bearing date &c. E. A. the wife of G. A. and niece of S. M. became entitled to the sum of £ free from the debts and controul of her husband and for her sole and separate use wherewith he was not to intermeddle and it was directed that her receipt alone should be a sufficient discharge *And whereas* the said sum of £ was paid to the said E. A. and has continued in her hands until the payment thereof as hereinafter is mentioned *And whereas* the said E. A. hath contracted and agreed with the above bounden (*Obligor*) for the purchase of an annuity or yearly sum of £ for her life and the true and *bonâ fide* consideration to be advanced and given for the purchase of the said annuity is the sum of £ so bequeathed to or in trust for the said E. A. as aforesaid which she the said E. A. by herself or her agent hath paid to the said (O.) *And whereas* the said E. A. hath requested that the above named (*Trustee*) may be a trustee for securing the said annuity to her for her sole and separate use in manner hereinbefore mentioned

Receipt of le-
gacy by wife.Agreement by
wife.

Now &c. That if the said (O.) his heirs executors administrators or assigns do and shall from time to time during the natural life of the said E. A. well and truly pay or cause to be paid unto the said (T.) his executors administrators or assigns one annuity or clear yearly sum of £ of &c. by quarterly payments &c. to be made &c. in every year by even and equal portions and clear of all deductions on any account whatsoever *And* do and shall make the first quarterly payment of the said annuity on &c. next ensuing the date of the said bond or obligation *And* in the event of the death of the said E. A. between or in the interval of any two of the said quarterly days of payment the said (O.) his heirs &c. do and shall also well and truly pay or cause &c. without any deduction &c. whatsoever such part of the said annuity or clear &c. of £ as shall be in proportion to the time or number of days which inclusive of the day

of the decease of the said E. A. shall have elapsed prior to such decease and after the day of payment next and immediately preceding that event Then &c.

No. CCLIV.

*Married
Woman.*

Underwritten Declaration of Trust in respect of this Bond.

It is hereby declared and agreed by and between the said E. A. and the said (T.) with the consent of (Husband) testified by their subscribing their names and affixing their seals to these presents That the above written bond given and entered into by the said (O.) to the said (T.) and the said annuity granted and secured to the said (T.) by the above written bond is granted and secured to him *Upon Trust* That the said (T.) his executors administrators or assigns do and shall receive the said annuity when and as the same shall become due and payable and after deducting all expenses attending the recovering and receiving the same do and shall pay the same annuity unto such person or persons and for such uses intents and purposes as the said E. A. as well when married as single and notwithstanding her coverture by her present or any future husband and either with or without any anticipation of the growing payments thereof and at any time or times and from time to time either by any note or memorandum under her hand or by her last will or any writing in the nature of a will shall direct order appoint or bequeath the same and in default of such direction order appointment or bequest or as to so much thereof of which no such direction &c. shall be made shall from time to time pay the same to the said E. A. or otherwise permit and suffer her the said E. A. to receive the same for her own sole use and benefit separate and apart from her present or any future husband and so and in such manner that the same may not be under his controul or liable to his debts disposition thereof or intermeddling therewith *And* in case of the death of the said E. A. before the receipt of the said annuity or the arrears thereof without making any such direction &c. as aforesaid *Then* as to so much as shall be due or payable after her decease *In Trust* for the person or persons who at her decease shall be her next of kin *And* it is also hereby declared and agreed by and between the said E. A. and the said (T.) that all and every the receipt or receipts which shall be given by the said E. A. or her appointee or appointees either to the said (O.) his heirs executors administrators or assigns or to the said (T.) his executors administrators or assigns for all or any part of the said annuity &c. shall be a sufficient discharge or

No. CCLIV. sufficient discharges to the persons paying the same for so much
Married as shall be thereby acknowledged to have been received *And*
Woman. it is hereby further declared and agreed that when and so often
as all or any part of the said annuity of £ or the arrears
thereof shall be paid to the said (T.) his executors &c. without
any previous directions to the contrary by writing under the
hand of the said E. A. That then and so often the said (O.)
his heirs &c. shall from the time of such payment be acquitted
and discharged of and from the payment so made and shall not
be required to see to the application of the said money or be
accountable or answerable for the misapplication or nonapplica-
tion of the same *In witness &c.*

No. CCLV.

Promise to
Marry.

No. CCLV.

Condition to Marry a Woman, or, in Default thereof, to pay a
Sum of Money.

To marry.

Obs. 1. A condition to marry no other woman than the obligee,
she not being bound to marry the obligor, has been held to operate
in restraint of marriage, and therefore void, *Low v. Peers*, 4 Burr.
2225.

2. A bond to procure a marriage, called a marriage brocage-bond,
is bad, being contrary to the policy of the law, *Hall v. Keane*, Show.
P. C. 76. Courts of equity will not only decree such bonds to be
delivered up, but also any sum paid to be refunded, *Debenham v. Ox*,
1 Ves. 275.

The Condition of this obligation is such that if the above-
bounden (*obligor*) do on or before the marry and take to
wife E. D. daughter of the above-named C. D. (a) provided the
said E. D. will thereunto assent and the laws of the realm per-
mit the same or if it shall happen that the said A. B. shall not
marry and take to wife the said E. D. as aforesaid if then he the
said A. B. his executors or administrators do and shall well and
truly pay or cause to be paid unto the said E. D. her executors
administrators or assigns the sum of £ of lawful money
&c. on the day of next ensuing the said day of
above mentioned and limited for the said marriage Then
&c.

(a) As to the necessity of this proviso, see *Obs.* 1.

No. CCLVI.

No. CCLVI.

*Mortgage Bond.*Mortgage.

Obs. 1. It was formerly understood, that a mortgagee taking a pledge to himself, took it in satisfaction of the debt, and could not, therefore, recover by an action on the bond, in case the estate on sale and foreclosure should prove inadequate; but it is now held that an action may be brought on the bond for the difference; but this will, however, open the foreclosure, and afford an opportunity to redeem, *Tooke v. Hartley*, 2 B. C. C. 125; *Schoole v. Sall*, 1 Scho. & Lef. 176.

2. Where a bond is given for securing the payment of a sum Stamp.
not exceeding 1400*l.*, previously secured by a mortgage or writing charged with the same duty as a mortgage, it requires a stamp of only 1*l.*; but when the sum exceeds 1400*l.*, a stamp duty of 1*l.* 15*s.*

Know all &c.

Obligation.

Now &c. That if the above-bounden (*obligor*) shall pay or cause to be paid unto the above-named (*obligee*) his &c. the full sum of £ of &c. with interest for the same after the rate of £ for every 100*l.* for a year upon the &c. now next ensuing the date of the above-written obligation without any deduction or abatement therefrom for or in respect of any charges assessments or other matter cause or thing whatsoever according to the provisoe or condition contained in a certain indenture bearing even date with the above-written obligation and made or expressed to be made between the said (*obligor*) of the first part the said (*trustee*) of the second part and the said (*obligee*) of the third part And if the above-bounden (*obligor*) his heirs executors or administrators and every of them shall in all things observe perform fulfil and keep the covenants clauses provisoes conditions and agreements whatsoever which on the part and behalf of him the said (*obligor*) his executors and administrators are and ought to be observed performed and fulfilled comprised and mentioned in and by the said indenture and according to the true intent and purport of the same Then &c.

Condition.

BONDS FOR PAYMENT OF MONEY.

Obs. 1. As to the time and place of paying a bond.

How forfeited. 2. Where interest is due upon a bond it has been held that it will be forfeited by a failure in the payment of the interest as well as of the principal, *Van Sandau v. —*, 1 B. & A. 214.

Stamp. 3. Where the sum secured is certain, the bond requires, by the 13 & 14 Vict. c. 97, an *ad valorem* stamp on the amount; not exceeding 50*l.*, 1*s.* 3*d.*; not exceeding 100*l.*, 2*s.* 6*d.*; not exceeding 150*l.*, 3*s.* 9*d.*; not exceeding 200*l.*, 5*s.*; not exceeding 250*l.*, 6*s.* 3*d.*; not exceeding 300*l.*, 7*s.* 6*d.*; and exceeding 300*l.* for every 100*l.*, or fractional part of 100*l.*, 2*s.* 6*d.* In the case of a bond for the repayment of a sum to be thereafter lent, where the amount to be secured *shall be limited*, the same duty as a bond for such limited sum; and where the total amount of money secured shall be uncertain and without limit, the same duty as on a bond for an amount equal to the amount of the penalty; and where there shall be no penalty of the bond in such last mentioned case, such bond shall be available only for such an amount as the *ad valorem* duty denoted by any stamp or stamps thereon will extend to cover.



No. CCLVII.

No. CCLVII.

To pay Money.

Common Condition of a Bond for the Payment of Money.

Obligation.

Know all &c.

Condition.

Now the condition of this obligation is such That if the above-bounden (*Obligor*) his heirs executors or administrators shall pay or cause to be paid unto the above-mentioned (*Obligee*) his executors administrators and assigns the sum of £ (a) with interest for the same after the rate of £ for every 100*l.* by the year on the day of now next ensuing Then this obligation shall be void or otherwise the same to remain in full force and virtue

(*Obligor*) (Seal)

Signed sealed and delivered by
the above-named (*obligor*)
(being first duly stamped) in
the presence of

A. B.
C. D.

(a) That is, the sum that is actually due; see Pref. sect. 1.

No. CCLVIII.

*Bond for the Payment of a Sum of Money by Instalments.**Know all &c.*

Now &c. That if the above-bounden (*Obligor*) his heirs &c. shall pay or cause to be paid unto the above-named (*Obligee*) his executors &c. the full sum of £ with interest for the same after the rate of 5*l.* for every 100*l.* for a year on the days and times in the manner following (that is to say) the sum of £ part thereof on the day of next ensuing the date of the above-written obligation and which will be in the year of our Lord 18 the sum of £ other part thereof on the day of then next following and the sum of £ the residue thereof with interest for the same after the rate aforesaid on the day of then next ensuing which will be in the year of &c. *Then* this obligation shall be void but if default shall be made in payment of any or either of the said several and respective sums of money with the interest thereof respectively in manner aforesaid or any part of them on any of the said days and times above mentioned for the payment thereof according to the true intent and meaning of these presents then this obligation is to remain in full force and virtue.

No. CCLVIII.
By Instalments.

Obligation.

Condition.

No. CCLIX.

*Bond to secure the Payment of future Advances.**Know all &c.*

Now &c. That if the above-bounden (*Obligors*) or either of them his heirs executors or administrators do and shall on demand in writing or within calendar months after demand (*a*) well and truly pay or cause &c. (*b*) unto the said (*Obligee*) such sum and sums of money [not exceeding in the whole the sum of £] as at the time of such demand shall be due from the said (*obligors*) or the survivor of them his executors or ad-

No. CCLIX.
Running Account.

Obligation.

Condition.

(*a*) If there be partners, say, "for that purpose to be made by the partner or partners for the time being carrying on the business of A. B. & Co. under the present or any future partnership well &c." as above.

(*b*) Or, when there are partners, "unto the said (*obligees*) or the partner or partners for the time being."

No. CCLIX.

*Running
Account.*

ministrators to the said (*obligee*) (*a*) his executors &c. on or as part of the balance of an account between them either for principal money or interest money lent advanced and paid bills discounted or accepted commissions or on any other account whatsoever free and clear from all deductions &c. being the same money as is or is intended to be secured by an indenture bearing even date with these presents and made between the said (*obligor*) of the one part and the said (*obligee*) of the other part
Then &c.



No. CCLX.

*Money left in
Trade.*

No. CCLX.

Bond for the Payment of Money left in Trade.

Obligation.

*Know all &c.*Recital of debt
from one partner
to another.

Whereas the above-bounden (*Obligor*) was on the day of now last past and is still indebted unto the above-named (*Obligee*) in the sum of £ for money book debts and other effects belonging to the said (*obligee*) as his part or share of the effects which he lately held in partnership with the said (*obligor*) *And* it was agreed that the said sum of £ should be left in the hands of the said (*obligor*) till the expiration of years from the day of now last past or till the decease of the said (*obligor*) which shall first happen provided the said (*obligor*) should elect or think proper to continue the said sum in his hands *And* that interest at the rate of by the year and in that proportion for any less time than a year shall be paid to the said (*obligee*) his executors and administrators for the said sum of £ at the times and in manner hereinafter mentioned

Condition.

Now &c. That if the said (*obligor*) his heirs executors or administrators shall pay or cause to be paid unto the said (*obligee*) his executors administrators or assigns the sum of £ on the day of 18 or the day of the decease of the said (*obligee*) whichever shall first happen *And* if in the meantime and until payment of the said sum of £ the said (*obligor*) his heirs executors and administrators shall pay or cause &c. unto the said (*obligee*) his executors &c. interest for the said sum of £ at the rate of per cent. per annum half-yearly upon the day of and the day of in every year the first payment to be made on the day of next

(*a*) Or, where there are partners, "to the said (*obligees*) or the partner or partners for the time being in the said house or his or their executors &c."

ensuing provided the said sum of £ shall not be paid in the meantime *And* in case the said sum of £ shall be paid between or in the interval of the said days of payment then also shall make payment of a proportional part of the said interest for any less time than for half a year at the same time and together with and in addition to the said principal sum of £
Then &c.

No. CCLX.
*Money left in
 Trade.*

No. CCLXI.

*Bond for Payment of Purchase Money retained in
 Purchaser's Hands.*

No. CCLXI.
*Payment
 (Purchase
 Money.)*

Obs. 1. It appears to be now settled, notwithstanding some prior decisions to the contrary, that a vendor does not lose his equitable lien upon the land for the purchase money by taking a distinct security, unless it appear to be the intention of the parties that it should be so, 1 B. C. C. 420; Sugd. V. & P. 551, 8th ed.

Vendor's lien
 not affected by
 taking a bond.

2. The same stamp as for a sum certain.

Stamp.

Know all &c.

Obligation.

Whereas by an act of parliament made &c. intituled "An Act for vesting lands in devised by (*testator*) late of &c. to &c. in trust to be sold for the benefit of the devisees therein named the several estates interests and shares of the said (*devisees*) are vested and settled in trustees therein named Upon Trust to convey the same to the above-named (*vendor*) his heirs and assigns on payment of the sum of £ and interest to the said (*trustees*) and the survivor of them &c. as in the said act is directed for that purpose *And whereas* the said (*V.*) hath for the sum of £ absolutely conveyed the said lands &c. to the above-named (*purchaser*) by indenture bearing even date herewith and hath agreed to procure a conveyance of the estates shares and interests of the devisees *And whereas* by reason of some controversy between the said (*V.*) and the said (*devisees*) touching the division of the said sum of £ now depending in the Court of Chancery the estates &c. of the said (*devisees*) cannot be immediately conveyed according to the said agreement and it hath been agreed that the said (*obligor*) shall retain the said sum of £ and pay interest for the same after the rate of £ per cent. per annum.

Recitals.

Now &c. That if the said (*obligor*) shall pay the said sum of £ upon having the conveyance of the estates parts and

Condition.

No. CCLXI. shares of the said (*devisees*) made to him according to the true
Payment intent and meaning of the said agreement and in the mean time
(Purchase do and shall pay interest for the same after the rate as aforesaid
Money.) by half-yearly payments on the day of and the
 in every year *Then &c.*

No. CCLXII.

No. CCLXII.
To pay Rent &c. *Bond to pay Rent and Perform Covenants reserved in a Lease.*

Stamp. *Obs.* A bond conditioned for the payment of an annual rent must
 be stamped with an *ad valorem* stamp on the gross amount of the
 rent reserved for the whole of the term, *Attree v. Anscomb*, 2 M. &
 S. 88. But no bond to be chargeable with a greater amount of stamp
 duty than the *ad valorem* duty given for the payment of a definite
 sum of money of the same amount as the penalty of such bond.

Obligation. *Know all &c.*

Recital of lease. *Whereas* the above-named (*lessor*) by indenture of lease bearing
 even date with and executed before the above-written obligation
 For the considerations therein mentioned did demise to the
 above-bounden (*obligor*) a messuage or tenement with the appur-
 tenances situated &c. *To Hold* the same for years from
 the day of next ensuing determinable nevertheless
 at the end of the first years of the said term if the said
 (*lessee*) his executors or administrators shall give months'
 notice thereof in manner therein mentioned at and under the
 yearly rent of £ payable quarterly.

Condition. *Now &c.* That if the above-bounden (*obligor*) his executors
 and administrators shall during the continuance of the said lease
 pay the said rent of £ on the days therein mentioned and
 also shall perform all the covenants clauses provisoes and agree-
 ments in the said lease contained according to the true intent and
 meaning of the same *Then* the above-written obligation shall be
 void and of no effect but if default shall happen to be made in
 any of the said quarterly payments or in the performance of any
 of the said covenants clauses provisoes and agreements then the
 same shall remain in full force and virtue.

No. CCLXIII.

No. CCLXIII.

*Bond for the Performance of Conditions of Sale.**Performance
of Conditions.**Know all &c.*

Obligation.

Whereas at a sale by public auction by Messrs. S. &c. at &c. on &c. the above-bounden A. B. was declared the purchaser of the timber comprised in the printed particular of sale thereof being lots 40 &c. at the sum of £ *And whereas* the following are amongst others the conditions of sale “purchaser to pay down” &c. (*here set forth the conditions of sale*) *And whereas* at the time of the sale the above-bounden A. B. paid the sum of £ being a deposit of £25 per cent. on the said sum of £ *And whereas* the above-bounden A. B. C. D. and E. F. have agreed to enter into the above-written obligation for the due performance of the said conditions of sale.

Recital of sale.

Conditions of
sale.Agreement to
enter into bond.

Now &c. That the above-bounden A. B. C. D. and E. F. or any or either of them their or any or either of their heirs executors or administrators shall pay or cause to be paid unto the said G. H. his executors administrators or assigns the sum of £ of lawful &c. being the residue of the said sum of £ at the times and in the manner specified in the conditions of sale and also shall observe perform fulfil and keep all and singular the conditions on the part of the above bounden A. B. to be paid kept done and performed *Then &c.*

Condition.

No. CCLXIV.

No. CCLXIV.

*Condition of a Bond for Performance of an Agreement for the Sale of Timber.**To perform
Agreements.**Know all &c.*

Obligation.

Now &c. That if the said (*Obligor*) his heirs executors &c. shall pay or cause to be paid unto the said (*Obligee*) his executors or administrators the sum of £ according to the true intent and meaning of certain articles of agreement for the purchase of timber and other trees growing on part of the estate belonging to the said (*obligee*) and situated &c. bearing even date herewith and made between &c. and shall perform and keep all and every the articles and conditions whatsoever which on the part and behalf of him the said (*obligor*) are or ought to be performed

Condition.

No. CCLXIV. and kept mentioned in the said articles of agreement or the conditions there referred to according to the true intent and meaning thereof *Then &c.*

—◆—

No. CCLXV.

*To perform
Covenants.*

No. CCLXV.

*Bond that an Apprentice shall perform the Articles of his
Apprenticeship.*

Condition.

Now &c. That if the said I. B. the son shall and do from time to time and at all times during the said apprenticeship well and truly observe perform fulfil and keep all and every the articles covenants clauses and agreements whatsoever in the said indenture contained and which on his part are to be performed and shall and do from time to time and at all times during the said term be faithful and just to the said I. L. his master in all his the said I. B.'s accounts receipts payments and all other dealings and doings in anywise relating to the said trade or employment or the affairs or business of the said I. L. and all other matters and things wherein as an apprentice or servant he shall or may be employed by or concerned for the said I. L. his executors &c. *Then &c.*

—◆—

No. CCLXVI.

*Wife to live
separate.*

No. CCLXVI.

Bond to permit a Wife to live separate from her Husband.

Obligation.

Know all &c.

Recital of
separation.

Whereas I. A. the wife of the above-bounden A. A. by virtue of a certain indenture bearing date &c. and made between the said A. A. of the one part and the said (*trustees*) of the other part now lives separate and apart from the said A. A. her said husband and follows the business of making and selling And the said A. A. did agree that his said wife should have and receive all benefit arising thereby or by any other trade or business which she might think fit to follow to and for her own separate use and support therewith and that he the said A. A. was not to intermeddle or have any profit or advantage therefrom so as she the said I. A. did not and should not contract any debt or debts for which the person or effects of her said husband

should or might be sued charged or incumbered in any manner howsoever And it was further agreed that the said A. A. should enter into the above-written obligation with the condition hereunder written for making void the same

No. CCLXVI.

*Wife to live
separate.*

Now &c. That if the said A. A. do and shall from time to time and at all times during the natural life of the said I. A. permit and suffer the said I. A. to live separate and apart from him and to have and receive all profit benefit and advantage arising or which shall arise from her said trade or business of making and selling or any other trade or business which she shall follow or employ herself in to and for her own separate use support and maintenance without any account suit trouble or molestation whatsoever and without acting or doing or causing or permitting to be done any act matter or thing whatsoever whereby or wherewith or by means or occasion whereof the said I. A. shall or may be molested or incumbered by any ways or means whatsoever or if the said A. A. his heirs executors or administrators or his or their lands or tenements goods and chattels shall at any time or times hereafter be sued attached or otherwise charged or incumbered for or by reason or means of any debt or debts which his said wife hath contracted or shall or may contract *Then* and in either of the said cases this obligation to be void otherwise &c.

Condition.

POST-OBIT BONDS.

1. *Definition.*

2. *Statutory Provisions as to.*

3. *Stamp Duty.*

SECT. 1. A post-obit bond is a security for the payment of a greater sum than the sum advanced, where either the payment depends upon a contingency, or, the payment being certain, the time of payment depends upon a contingency. This is a security of a questionable nature, the validity of which has often been disputed with success in a court of equity, where inadequacy of price is deemed to be a sufficient ground for affording relief against such bonds, *Gowland v. De Faria*, 17 Ves. 20.

Definition.

2. As a post-obit bond is a bond for a sum certain, or at a time that may be rendered certain, and is therefore a matter of computation, it is held that it does not come within the stat. 8 & 9 Will. 3,

Statutory provisions as to.

Post-Obit. c. 11, s. 8; but within the stat. 4 & 5 Anne, c. 16, s. 12, *Murray v. Earl of Stair*, 2 B. & C. 82.

Stamp duty. 3. As to the stamp on the payment of a sum certain, see *ante*, *Obs. 3, Bond for Payment of Money.*

No. CCLXVII.

Common Form of a Post-Obit Bond.

No. CCLXVII.

Post-Obit.

Obligation.

Know all &c.

Recital of contract for purchase.

Whereas the above-named (*obligee*) hath contracted and agreed with the above-bounden (*obligor*) for the purchase of the sum of £ to be paid to her the said (*obligee*) her executors administrators or assigns in the event of A. B. departing this life in the lifetime of the said (*obligor*) but not otherwise at or for the price or sum of £ *And whereas* in performance of the said recited contract she the said (*obligee*) hath paid the said sum of £ of lawful &c. unto the said (*obligor*) at or before the

Payment of consideration.

sealing and delivery of the above-written obligation the receipt and payment whereof accordingly the said (*obligor*) doth hereby acknowledge *And whereas* upon the treaty for the purchase of the said contingent sum of £ it was agreed that the payment thereof should be secured by among other securities the bond of the said (*obligor*) with the condition &c.

Agreement to give bond.

Condition.

Now &c. That if the said A. B. should depart this life in the lifetime of the said (*obligor*) Then and in such case if the said (*obligor*) his heirs executors or administrators shall pay or cause to be paid unto the said (*obligee*) her &c. within calendar months next after the decease of the said A. B. as aforesaid the sum of £ of &c. Or in case the said (*obligor*) shall happen to depart this life in the lifetime of the said A. B. Then &c.

No. CCLXVIII.

No.
CCLXVIII.

*Quiet
Enjoyment.*

Bond from a Vendor of an Estate for quiet Enjoyment, free from all Incumbrances, the Estate being subject to the Payment of Portions under a Marriage Settlement.

Obligation.

Know all &c.

Recital of contract for purchase.

Whereas the above-named (*obligee*) hath contracted with the above-bounden (*obligor*) for the absolute purchase of all &c. and

the inheritance thereof in fee simple exonerated and discharged from all incumbrances whatsoever [except a yearly quit rent of per acre] for the price or sum of *And whereas* upon investigating the title of the said (V.) to the said hereditaments it hath been discovered that the same are subject to the payment of certain sums of money for the portions of the younger sons and daughters of the said (V.) and M. his wife by virtue of certain indentures of &c. *And whereas* the said (son) is an infant under the age of twenty-one years and is therefore incompetent to release the said purchased premises and it is possible that there may be issue hereafter born of the said (V.) and M. his wife *And whereas* upon the treaty for the said purchase in consideration of the premises it was agreed that the said (V.) should guarantee and secure to the said (P.) his heirs appointees and assigns the quiet and peaceable enjoyment of the said purchased hereditaments against all persons whomsoever as hereinafter is expressed

No.
CCLXVIII.
*Quiet
Enjoyment.*

Recitals of
defects in title.

Agreement to
enter into a
bond.

Now &c. That if the said (P.) his heirs appointees and assigns shall from time to time and at all times hereafter peaceably and quietly have hold and enjoy the said messuage or tenement farm lands and hereditaments as well freehold as copyhold hereinbefore released or otherwise assured or intended so to be and receive and take the rents issues and profits thereof without the let suit trouble eviction interruption claim or demand whatsoever of from or by any person or persons whomsoever *And also* be well and effectually saved defended kept harmless and indemnified as well from and against the portions of the said younger children of the said (V.) and M. his wife if any there should be as from and against all former and other gifts grants bargains sales mortgages leases jointures dower right and title of or to dower estates titles charges and incumbrances whatsoever at any time hereinbefore made done executed committed suffered or created by the said (V.) or any other person or persons whomsoever Then &c.

Condition.

No. CCLXIX.

Bond of Indemnity on the Sale of Part of the Premises held under a Lease against the Rent reserved in the Lease, and for quiet Enjoyment of other premises, in consequence of a Defect in the Title.

No. CCLXIX.
Leaseholds.

Know all &c.

Whereas (recite two leases of different dates granted to obligor)

Obligation.
Recital of
leases.

No. CCLXIX. *And whereas (recite defect in the title of the second lease) And*
Leaseholds. whereas (recite assignment of the leasehold premises from obligor
 Agreement to *to obligee) And whereas* upon the treaty for the sale and the
 enter into bond. assignment expressed to be made in or by the said in part
 recited indenture bearing even date with the above written
 obligation it was agreed that the said (*obligor*) should enter into
 the said bond subject to the condition hereinafter contained for
 making the same void

Condition. *Now &c.* That if the said (*obligor*) his heirs executors or
 administrators shall from time to time and at all times hereafter
 well and effectually save defend keep harmless &c. such of the
 said premises as are comprised in the lease bearing date the
 as are expressed to be assigned by the said indenture
 of assignment bearing even date herewith and the said (*obligee*)
 his heirs executors &c. and every of them of from and against
 the said yearly rent of £ reserved in the said in part re-
 cited indenture &c. and of from and against all actions &c.
And also if the said (*obligee*) his executors &c. shall and may at
 all times during the residue of the said term demised by the said
 indenture of lease bearing date &c. peaceably &c. have &c. such
 of the premises comprised in the said indenture &c. without the
 let suit trouble interruption or disturbance of from or by the said
 A. B. &c. but subject to the covenants and agreements contained
 in the same indenture of lease bearing date the &c. (*the first*
lease) so far as the same are applicable to such of the premises
 as are comprised in the said indenture of assignment as are
 expressed to be thereby assigned discharged of the said yearly
 rent Then &c.



No. CCLXX.

*Repairing a
Road.*

No. CCLXX.

Bond to Repair a Road.

Obligation.

Recital of con-
tract.*Know all &c.*

Whereas the above bounden (*Obligors*) have contracted and
 agreed with the said (*Trustees*) above named at their own costs
 and charges well and sufficiently to repair and amend from time
 to time and at all times when and where needful a certain road
 commonly called beginning at and extending from
 to comprising a distance of yards more or less And
 also all and singular the drains ditches aqueducts and conduits
 adjoining to or under the said road for and during the term of

years commencing from the day of next No. CCLXX.
 ensuing the date of the above written obligation the said (O.) Repairing a
 being paid yearly by the said (T.) during the said term after the Road.
 rate of £ per mile by equal half-yearly payments in every
 year during the said term the first payment thereof to commence
 and be made on the day of next ensuing the date
 of the above written obligation And the said (O.) have also
 agreed with the said (T.) to find and provide sufficient materials
 and tools at their own expense at all times during the said term
 for the purpose of repairing and keeping in repair such part of
 the road as aforesaid And all the drains ditches and conduits
 thereof made or to be made to leave in good and sufficient re-
 pair and condition at the end of the said term but if the said
 (O.) or the said (T.) or any two or more of them should be
 dissatisfied with the said contract and should give to each other
 three months' notice in writing of their intention to give up or
 vacate the contract that then it shall and may be lawful to and
 for the said parties respectively giving such notice in the first or
 second year to vacate or make void the said contract at the
 expiration of such notice respectively and the same shall be va-
 cated and made void accordingly.

The Condition therefore of the above written obligation is such Condition.
 That if the above bounden (O.) or any of them their or any of
 their heirs executors administrators or assigns shall at their own
 proper costs charges and expenses from time to time and at all
 times when and where needful during the said term of
 years well and sufficiently uphold maintain repair support cleanse
 and keep the said part of the said road hereinbefore described
 and every part thereof and all and singular the drains ditches
 and conduits adjoining or belonging to or under the same with
 all and all manner of needful repairs amendments and works
 whatsoever And also shall at their own expense provide suffi-
 cient materials and tools for the purposes aforesaid to the satis-
 faction of the (T.) or such person or persons as they shall appoint
 according to the true intent and meaning of the said contract
 and of these presents And if at the end or other sooner deter-
 mination of the said term of years the said (O.) shall leave
 the same part of the said road and premises aforesaid well and
 sufficiently repaired and amended Then &c.

No. CCLXXI.

*To Replace
Stock.*

No. CCLXXI.

Condition in Bond for replacing Stock.

Stamp duty.

Obs. An *ad valorem* stamp, reckoned on the value of the stock on the day of the date of the bond, or either of the ten days preceding.

Condition.

Now &c. That if the above bounden (*obligors*) or either of them their or either of their heirs executors or administrators shall on or before the day of next ensuing duly purchase and transfer the sum of £ 3 per cent. &c. to or in the name of the said (*obligee*) and do and shall in the mean time pay to him such and the same sum and sums of money as the dividends of the said sum of £ 3 per cent. &c. would amount to if the same were not sold out but remained in his name and at such and the same several days and times as the same dividends would in that case become payable Then &c.



No. CCLXXII.

*To Resign
Office.*

No. CCLXXII.

*Bond of Resignation as Master of a Free-school, in case of
Negligence, &c.*

Obligation.

*Know all &c.*Recital of
election.

Whereas the court of assistants of the above named company in pursuance of the trust in them reposed did on &c. elect and choose the above bounden (*Obligor*) to be chief schoolmaster at in the county of founded and endowed by &c. deceased during his diligent and faithful discharge of his duty in such behalf

Condition.

Now &c. That if the said (*O.*) from time to time and at all times hereafter during his continuance in the said place or office of schoolmaster shall observe and keep all rules and orders already made or to be made by the said company for the better regulation of the said school and scholars *And* shall diligently and carefully perform his duty and office in the said place of chief schoolmaster of the said school in all respects for the benefit and credit of the said school according to the trust in him reposed by the said company *And* shall within months after notice to him given or left in writing for him at the said school under the hands of the master and wardens of the said company or any three of them peaceably and quietly leave surrender and

resign his said place of chief schoolmaster together with the possession of the said school and school-house with the appurtenances Then &c.

No. CCLXXII.

To Resign
Office.

No. CCLXXIII.

No.
CCLXXIII.

To Resign
Living.

Bond to reside upon a Parsonage, and to resign in favour of the Patron.

Obs. Formerly, general as well as special bonds of resignation were held good at law, and a court of equity would interfere only when a bad use was attempted to be made of such bonds; but in the well known case of the *Bishop of London v. Ffytche*, the House of Lords held that a presentation after a general bond of resignation was illegal, and consequently that a bishop could not be compelled, under such circumstances, to induct the person presented to him, 2 B. P. C. 211. Since that decision, special bonds of resignation have been held good, *Lord Sondes v. Fletcher*, 5 B. & A. 835; *Fletcher v. Lord Sondes*, 1 Bligh, N. S. 144; and by the 9 Geo. 4, c. 94, they are now, in confirmation of the common law, made valid in specified cases.

Know all &c.

Obligation.

Whereas the rectory of the church of _____ in the county of _____ and diocese of _____ is vacant by the death of I. H. clerk the last incumbent therein And the above-named (*obligee*) being the patroness of the said rectory and church hath by writing under her hand and seal bearing date &c. presented the above-bounden (*obligor*) to the bishop of the said diocese To the end that he the said (*obligor*) may be admitted instituted and inducted into the said rectory and church as aforesaid *And whereas* the above-bounden (*obligor*) hath agreed to be personally resident in the said parish of _____ so long as he shall continue rector or incumbent there without procuring or accepting any qualification or licence from any person or persons for dispensing with his the said (*obligor's*) residence in or upon the said parsonage *And whereas* the said (*obligee*) hath several sons who are now all infants but probably some one of the said sons may be desirous of taking holy orders and of being presented to the said rectory and the said (*obligor*) hath agreed in that event to resign the said rectory or living upon the request of the said (*obligee*) or the owner of the said rectory for the time being in order that any son so taking holy orders may be presented thereunto.

Recital that
church is
vacant.

Agreement to
reside.

To resign in
favour of pa-
tron's son.

No.
CCLXXXIII.
*To Resign
Living.*
Condition.

Now &c. That if the said (*obligor*) shall procure himself to be legally admitted &c. into the said rectory as aforesaid *And* shall continue to reside in and upon the said parsonage of &c. for so long time as he shall be rector there without procuring or accepting any qualification or licence from any person or persons whomsoever whereby to dispense with the said (*obligor's*) residence in or upon the said parsonage *And also* if any son of the said (*obligee*) shall take orders and the said (*obligee*) or the owner of the said rectory for the time being shall present such son of the said (*obligee*) to the said rectory and the said (*obligor*) within calendar months after request made to him for that purpose shall resign the said living to the bishop of the diocese for the time being and cause such resignation to be accepted so that the said rectory may become vacant *And also* within the same month give notice of such resignation to the said (*obligee*) her executors administrators or assigns *Then &c.*



No.
CCLXXXIV.
*To secure
Money to Wife.*

No. CCLXXXIV.

Bond for securing a Sum of Money by the intended Husband to the Wife, and the Issue of the Marriage.

Obs. A bond conditioned for the payment of money after the obligor's death, given to a woman in contemplation of the obligor's marrying her, and intended for her benefit, is held to be a good marriage contract at law, and is not extinguished by the subsequent marriage of the parties, *Milbourne v. Ewart*, 5 T. R. 381. Courts of equity consider such bonds as agreements for a settlement of which specific performance will be strictly enforced, as well for the benefit of the issue of the marriage as for the wife, *Prebble v. Boghurst*, 1 Swan. 309.

Obligation.
Recitals.

Know all &c.

Whereas a marriage is intended to be shortly solemnized between the above-bounden (*obligor*) and M. the daughter of the above-named R. P. *And whereas* the said (*obligor*) in consideration of the marriage portion of the said M. P. hath agreed that if the said intended marriage shall take effect and the said M. P. shall happen to survive him the said (*obligor*) and there shall not be any child or children of the said marriage nor any issue of any such child or children then living or afterwards born alive the sum of £ shall be paid out of his estate and effects

unto the above-named (*obligees*) or the survivor of them or the executors &c. upon trust to pay the same to the said M. P. for her own proper use but in case the said M. P. shall happen to survive him the said (*obligor*) and there shall be any child or children of the said marriage or any issue of such child or children then living or afterwards born alive Then the heirs executors or administrators of the said (*obligor*) shall within months next after his decease pay or cause to be paid unto the said (*obligees*) or the survivor &c. the full sum of £

No.
CCLXXIV.
To secure
Money to Wife.

Now &c. That if the said intended marriage shall take effect Condition.
and the above-named M. P. shall survive the said (*obligor*) and there shall not be any child or children of the said marriage nor any issue of such child or children who shall be living at the decease of him the said (*obligor*) or afterwards born alive Then and in such case if the heirs executors or administrators of the said (*obligor*) shall immediately after the decease of the said (*obligor*) pay or cause to be paid unto the said (*obligees*) or the survivor &c. the £ upon trust to pay the same unto the said M. P. for her own proper use and benefit or in case the said M. P. shall happen to survive the said (*obligor*) and there shall be any child or children of such marriage or any issue of such child or children living at such the decease of the said (*obligor*) or afterwards born alive then and in such case if the heirs executors or administrators of the said (*obligor*) shall within months next after the decease of the said (*obligor*) pay or cause to be paid unto the said (*obligees*) or the survivor &c. the sum &c. Then &c. (a)

CANALS, RAILWAYS, &c.

No. CCLXXV.

Notice of Intention to apply for an Act of Parliament to make a Canal.

No. CCLXXV.
Notice.

Obs. 1. This form may be adapted to the making a railway, harbour, bridge, &c.

2. Such notices are required by the Standing Orders, sect. 15, to be published in three successive weeks in the months of October and

(a) The trusts of the sum secured to be paid to the trustees should be declared by a separate deed.

No. CCLXXV. *Notice.* November, or either of them, immediately preceding the session of Parliament in which application for the bill is to be made, in the *London, Edinburgh, or Dublin Gazette*, as the case may be, and in some paper of the county in which the city, town, or lands to which such bill relates is situate; and if there be no newspaper published therein, then in the newspaper of an adjoining county; and if the bill does not relate to any particular city, town, or lands, then in the *Gazette* only, the same to be delivered at the office two clear days previous to the publication of the same. See further as to publishing notices, Standing Orders, *ub. sup.*

3. A map or plan, with a book of references to the owners and occupiers, must be deposited with the clerk of the peace, see *Ellis's Precedents of Proceedings in Parliament on Private Bills*.

Notice is hereby given to all whom it may concern That application is intended to be made to parliament in the ensuing session for leave to bring in a bill for making and maintaining a navigable cut or canal from the harbour or wet dock at in the parish of in the county of to the township of in the parish of in the county of near to a certain mill known or commonly called by the name of and to join and communicate with a canal belonging to the company of proprietors of the navigation from to *And for forming and maintaining reservoirs for the better supplying the same with water together with locks dock basins feeders and aqueducts for the purposes aforesaid And also for the erecting steam engines and other machines for raising water And for making all necessary quays wharfs warehouses staiths and landing places adjoining thereto at or upon the grounds situate at And also for diverting or altering the present course of the river in near or through the several parishes of in the said county for a space not exceeding so as to connect the said canal with the said river by means of a lock or short cut at the east side of in the said parish of which said canal is intended to be made in or pass through the several parishes townships vils hamlets or places of in the said county And also for making convenient roads ways avenues and approaches to the said harbour from the green on the north side of the town of in the said county and from or near the Crown public house on the south side of the church of to join the high road leading from E. to L. in the county of and also from the foot of the hill near the parish of in the county of to join the lane R. leading to the bridge*

over the river S. and along the banks of the same to where it joins the river M. No. CCLXXV.
Notice.

Dated this day of

By order

A. B. (*solicitor*).

No. CCLXXVI.

No.
CCLXXVI.

Notice to Owner or Occupier of Lands wanted for the Completion of a Canal, Railway, Harbour, &c.

Notice to Owner

Obs. A notice in the following form is required by the Standing Orders of the House to be given on or before the 31st *December*, immediately preceding the application for a bill by which any lands or houses are intended to be taken, see *STANDING ORDERS*, sect. 17.

Sir

We beg to inform you that application is intended to be made to parliament in the ensuing session for an act (*here insert the title of the act*) and that the property mentioned in the annexed schedule or some part thereof in which we understand you are interested as therein stated will be required for the purposes of the said undertaking according to the line thereof as at present laid out or may be required to be taken under the usual powers of deviation to the extent of yards on either side of the said line which will be applied for in the said act and will be passed through in the manner mentioned in such schedule.

We also beg to inform you that a plan and section of the undertaking with a book of references thereto has been or will be deposited with the several clerks of the peace of the counties of (*specify the counties in which the property is situate*) on or before the 30th of November and that copies of so much of the said plan and section as relates to the parish in which your property is situate with a book of reference thereto have been or will be deposited for public inspection with the clerk of the said parish (schoolmaster of the parish, town clerk of the royal burgh, or the postmaster of the post town in or near such parish, *as the case may be*) on or before the 31st day of December instant on which plans your property is designated by the numbers set forth in the annexed schedule.

As we are required to report to parliament whether you assent to or dissent from the proposed undertaking or whether you are neuter in respect thereto you will oblige us by writing your answer of assent dissent or neutrality in the form left herewith

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Notice to Owner.

and returning the same to us with your signature on or before the day of next and if there should be any error or misdescription in the annexed schedule we shall feel obliged by your informing us thereof at your earliest convenience that we may correct the same without delay.

We are Sir

Your most obedient Servants.



No.
CCLXXVII.
Petition.

No. CCLXXVII.

Petition to Parliament for a Railway Act.

Obs. Columns for signatures of the petitioners, not being members of parliament, to be engrossed on parchment in words at length, and to be annexed when presented to an estimate signed by an engineer of the expenses, an account of the money subscribed, with the names of the subscribers; also a list of the owners and occupiers of lands to be used for the undertaking, specifying the parties assenting and dissenting, with a duplicate of the map or plan deposited with the clerk of the peace, see *Ellis's Precedents of Proceedings in Parliament on Private Bills*; *Bramwell's Manner of Proceeding on Private Bills in the House of Commons*.

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled.

The humble petition of the several persons whose names are hereunto subscribed being owners of estates in the county of or merchants and traders residing in the city of L. and the city of B.

Showeth

That the making a railway with proper works and conveniences adjoining thereto or connected therewith for the passage of waggons and other carriages from or near the town of L. in the county of M. in or through the several parishes of to the township of S. together with two branches commencing at or near to certain closes or lands called R. in the township of W. in the parish of P. will be of great advantage to the inhabitants of the said county town and neighbourhood by opening a cheap and expeditious mode of communication between the two leading towns of and of That one branch extending itself northwardly into or near to a certain close or field in the township of G. opposite or near to B. pot-

teries will communicate by means of a tramroad with the harbour or wet dock of P. and the other branch extending itself to the east of the church of N. as far as the mill at O. will communicate with the canal of L. *And* also that this latter branch will open a short and easy communication from the town of F. to the sea and afford a cheap and ready conveyance of agricultural produce and other commodities from thence and facilitate the supply of goods wares and merchandize from different quarters of the world *And* also that your petitioners and all other owners of estates merchants manufacturers tradesmen and residents near to the said intended railway are desirous of having the benefit of such communication and of forming themselves into a company for the purpose of carrying the undertaking into execution but they cannot effect the purposes aforesaid without the authority of parliament *And further* that for the completing the said railway it will be expedient to make a tunnel through the town of L. and divert the course of the river O. and to make a viaduct over the and for effectuating the several purposes aforesaid it will be necessary to purchase many lands and houses and to obtain power for so doing

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Petition.

Your petitioners therefore humbly pray that leave may be given to bring in a bill or bills for forming or making the said railway and branches thereof and the said tramroad and tunnel and for effectuating the several other purposes above mentioned by such ways and means and under such rules and regulations provisoes and restrictions as this Honourable House shall judge proper and expedient

(*petitioners' names*)



No. CCLXXXVIII.

Appointment of a Proxy to vote at a Court of Proprietors.

Obs. It is a usual provision in canal and other acts that a proprietor, or in case of infancy and lunacy, the guardian or committee of a proprietor, may appoint a proxy to vote at any meetings.

I A. B. proprietor (or "guardian," or "committee of A. B. of &c. proprietor") of shares in navigation (or "railway, dock &c." as the case may be) do hereby nominate constitute and appoint C. D. of &c. in my name and in my absence to vote and give my assent or dissent to any business or thing relating thereto

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Proxy to Vote.

which shall be proposed at any general or special meeting of the proprietors of company or any adjournment thereof at all times hereafter until I shall revoke this appointment by notice in writing to the clerk of the said company *In witness* whereof I have hereunto set my hand this day of

A. B.

CERTIFICATES.

Certificates of Acknowledgment of Deeds by Married Women
see *post*, FINES AND RECOVERIES.

Certificates to be taken out by Attornies.

Obs. As to the stamp duties on such certificates, and the regulations respecting the taking out such certificates, see 13 & 14 Vict. c. 97.

No.
CCLXXIX.
Benefice.

No. CCLXXIX.

A Certificate to the Ordinary, of the Condition of the Dwelling House belonging to a Benefice.

Obs. By the 17 Geo. 3, c. 53, s. 5, the ordinary and patron are required, before they give their consent to the repairing or rebuilding a parsonage house, to cause an inquiry to be made and certified of the state of the building.

We the Rev. A. B. of in the county of clerk and C. D. of &c. clerk being two clergymen within the diocese of the bishop of do hereby certify to the said bishop pursuant to the directions and instructions sent by him to us that we have made inquiry into the state and condition of the buildings on the glebe belonging to the rectory (vicarage &c.) within the said diocese at the time the Rev. clerk the present incumbent thereof entered upon the said living which was in or about the year of our Lord and do find that the same hath been kept in due and ordinary repair (*or* "that the same by wilful neglect hath been suffered to go into decay") and we have also inquired

into the money received by the said for dilapidations from the representative of the former incumbent and do find that he hath expended the whole thereof in the necessary repair of the buildings (*or "that the same hath not been expended in repairs"* &c. *as the case may be*) upon the glebe belonging to the said living

No.
CCLXXIX.
Benefice.

Given under our hand this day of A. B.
C. D.

Certificate of Marriage.

Obs. By the 13 & 14 Vict. c. 97, a marriage certificate, except of any common seaman, mariner or soldier, requires a stamp duty of 5s.

CCLXXX.

A Certificate by the Mayor of a Corporation of the due Execution of a Deed.

No. CCLXXX.
Execution of a Deed.

City of } I A. B. mayor of the city of aforesaid do
 } hereby certify whom it may concern That C. D.
of in the county of did on the day of the date hereof sign and seal and as his voluntary act and deed deliver unto E. F. of &c. aforesaid one deed indented bearing even date with these presents made or expressed to be made between the said C. D. of the one part and the said E. F. of the other part and that he did execute the same in my presence and in the presence of the witnesses whose names are indorsed on the back of the said indenture and which said indenture is annexed to this present certificate In testimony of the truth hereof I the said A. B. have hereunto put my hand and affixed the seal of the said city and corporation this day of &c. A. B. Mayor.

No. CCLXXXI.

A Certificate of a Mortgage being paid off.

Obs. A certificate of this kind, which is required by the Registry Acts, must be on unstamped parchment, and signed (not sealed) by

No.
CCLXXXI.
Of Mortgage being paid off.

No.
CCLXXXI.
*Of Mortgage
being paid off.*

the mortgagor and mortgagee in the presence of two witnesses, who must prove upon oath, before the registrar or his deputy, the signing of the same. And if the witnesses are not present at the payment of the money, the mortgagor and mortgagee must acknowledge it to be satisfied. The certificate is then to be filed by the registrar, to remain on record. In the act relating to Middlesex, the certificate is confined to mortgages only, and does not extend, as in the other acts, to judgments and recognizances.

To the Registrar of Riding in the county of York or his
lawful Deputy.

We the said I. H. of &c. and D. W. of &c. respectively mortgagor and mortgagee in a certain indenture of mortgage bearing date the day of and made between the said I. H. of the one part and the said D. W. of the other part (a memorial whereof was registered in the said office the day of near twelve at noon in book marked or called page and number.) *Do* hereby certify to the said registrar or his deputy that all monies due owing and secured in the said indenture are fully paid and satisfied in discharge thereof And we do hereby request that an entry may be made of such payment and satisfaction in the margin of the said register-book opposite to the entry of the said memorial as the act of parliament in that case directs As witness our hands this day of

I. H.
D. W.

Witnesses to the
signing hereof

G. L.
H. B.

—♦—
No. CCLXXXII.

No.
CCLXXXII.
*Residence of
Incumbent.*

Certificate of the Residence of an Incumbent.

Obs. A certificate of this kind is required, by the 17 Geo. 3, c. 53, to be given by an incumbent, in order to entitle him to raise money upon mortgage under that act.

We A. B. rector (*or* "vicar") of the parish of in the diocese of clerk and C. D. &c. clerk do hereby certify that E. T. incumbent of the parish church aforesaid hath resided upon his living or benefice within that parish for the space of twenty weeks between the day of and the day of last

Given under our hands the day of A. B.
C. D.

No. CCLXXXIII.

No.
CCLXXXIII.
*Service of
Clerkship.*

*Certificate of an Articled Clerk having regularly served his
Clerkship.*

And I do hereby certify that the said A. B. has duly and faithfully served under his articles of clerkship (*or* “assignment,” *as the case may be*) bearing date &c. for the term therein expressed and that he is a fit and proper person to be admitted an attorney.



No. CCLXXXIV.

No.
CCLXXXIV.
Title to Orders.

*A Certificate of the Nomination of a Curate as a Title for
Orders.*

Obs. By the 33rd canon, it is ordained, that no person shall be admitted into sacred orders, except he shall exhibit to the bishop a presentation of himself to some ecclesiastical preferment then void in the diocese, or a certificate that he is provided with some church within the diocese where he may attend the cure of souls. If a bishop ordains any person without any of these titles, he must maintain him until he shall prefer him to some ecclesiastical living, under the penalty of being suspended from giving orders for the space of one year, Gibs. Cod. 161.

To the Right Reverend Father in God Lord Bishop of

These are to certify to your Lordship that I (*Rector*) rector (*or* “vicar”) of in the county of do hereby nominate and appoint A. B. to perform the office of a curate in my church of aforesaid and do promise to allow him the yearly sum of £ for his maintenance in the same and to continue him to officiate as curate in my said church until he shall be provided with some other certain place where he may exercise his ministerial functions unless on account of any fault by him committed he shall be lawfully removed from performing the office

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CCLXXXIV.
Title to Orders.

of a curate in my said church by your lordship or your successor
And I hereby solemnly declare that I do not fraudulently give
this certificate to entitle the said A. B. to receive holy orders
but with a real intention to employ him in my said church ac-
cording to what is before expressed As witness my hand this
day of

COMPOSITION.

- | | |
|---|--|
| 1. <i>Modes of Arrangement between a Debtor and his Creditors.</i>
<i>Deed of Inspection.</i>
<i>Deed of Composition.</i>
<i>Letter of Licence.</i>
<i>Assignment of Debtor's Estate.</i> | <i>complied with by Debtor.</i>
5. <i>When Securities can be retained.</i>
6. <i>Composition Contracts must be fair.</i>
7. <i>Covenant not to sue.</i>
8. <i>Release.</i>
9. <i>Assignment of a Person's Property in Trust, when valid.</i>
10. <i>No Preference in Payments under a Trust Deed.</i>
11. <i>Stamp on a Composition Deed.</i> |
| 2. <i>Assignment for a Composition by Deed or Parol.</i> | |
| 3. <i>Assent of the Creditor expressed or implied.</i> | |
| 4. <i>Terms of the Contract to be strictly</i> | |

Modes of arrangement between a debtor and his creditors.

Deed of inspection.

Deed of composition.

Letter of licence.

SECT. 1. Creditors may enter into any arrangements with a debtor which may best suit the convenience of the parties; and the courts will construe all composition contracts so as to give full effect to them. The mode of effecting such an arrangement must depend upon the circumstances of the case. When a debtor wishes only for time, a simple agreement to that effect may be sufficient; but the more usual mode in this case is to execute a deed called a *Deed of Inspection*, by which a debtor is enabled to carry on his business for the benefit of the creditors under the inspection of trustees. Another mode of effecting an arrangement is by the creditors agreeing to accept a composition, or a part of their respective debts, in satisfaction of the whole; and the instrument by which this is effected is called a *Deed of Composition*; frequently a memorandum of an agreement to accept a composition is drawn up at the meeting of the creditors, as a preliminary to a more formal deed. In both these deeds, it is usual to insert a covenant, called a Letter of Licence, whereby the creditors

agree to give the debtor, for a certain time, liberty to pursue his affairs without the danger of being arrested or sued. Sometimes this covenant is given by a separate instrument. The last and most frequent mode of effecting such an arrangement, is by the debtor conveying or assigning his estate to trustees, for the benefit of the creditors, which may be done by one or by separate instruments, according to the nature of the transaction. Sometimes debtors who are not traders voluntarily adopt this mode of paying their debts, in which case the creditors are usually not parties.

Composition.

Assignment of debtor's estate.

2. Every agreement between a debtor and his creditors ought to be by deed; and if the instrument is to operate as a release or discharge at law of a specialty debt, it cannot be otherwise, *Lowe v. Eginton*, 7 Price, 604; 6 Petersd. Abridg. 2. At law, an agreement not under seal to accept a less sum in satisfaction of a greater one than is due, is not binding, Co. Litt. 212 b.; *Pennel's Case*, 5 Co. 117; although followed by acceptance of payments, *Heathcote v. Crookshanks*, 2 T. R.; *Fitch v. Sutton*, 5 East, 230; unless there be some new and sufficient consideration, *Steinman v. Magnus*, 11 E. 390; but an agreement not under seal is not of itself evidence of the consideration, 7 T. R. 350, n.

Assignment for a composition by deed or parol.

3. The assent of a creditor to a composition contract is necessary to make it binding on him; but this assent may be either expressed or implied, *Butler v. Rhodes*, 1 Esp. 236; and a verbal promise to accept a composition and execute the deed will prevent the creditor from suing for the original cause of action, *Bradley v. Gregory*, 2 Campb. 383. So in equity, creditors are in general as much bound by acting under a deed of composition as if they had signed the deed, *Ex parte Sadler*, 15 Ves. 52; but a creditor is not bound by a composition deed to which he is a party, if he have been induced to sign it by any misrepresentation made to him, *Cooling v. Noyes*, 6 T. R. 263.

Assent of the creditor, expressed or implied.

4. If the terms of the composition are not strictly complied with by the debtor, the creditor is released from his obligation, *Cranley v. Hillary*, 2 M. & S. 120; and a court of equity will not relieve the debtor, if he do not strictly perform the agreement, 1 Eq. Ab. 28; *Rose v. Rose*, Ambl. 332; *Mackenzie v. Mackenzie*, 16 Ves. 372. So where the creditors had agreed to take a composition, and after the first payment the debtor became a bankrupt, it was held that the creditors were entitled to prove under the commission for the residue, *Ex parte Bennet*, 2 Atk. 528; *Ex parte Vere re Palmer*, 1 Rose, 281; *Ex parte Peel*, ib. 434.

Terms of the contract to be strictly complied with by debtor.

5. If the composition deed contain no stipulation respecting securities, a creditor may retain them, provided he deduct the sum to be recovered upon the security, and take a composition for no more than what remains due, *Thomas v. Courtenay*, 1 B. & A. 1. But where

When securities can be retained.

Composition.

a creditor having received the full amount of his composition, and given the debtor his release, recovered sums on bills formerly given as a security, such sums have been considered as money received to the debtor's use, *Stock v. Mawson*, 1 B. & P. 286. So where a creditor, after having executed a deed of composition, refused to set the amount of his debt to his name, upon the ground of his having a security, he was held to have bound himself to the extent of his then existing debt, and that he could not recover upon the security, *Harrhy v. Wall*, 1 B. & A. 103; *S. C.* 2 Stark. 195; *Holmer v. Viner*, 1 Esp. 131.

Composition contracts must be fair.

6. A fair and equal composition contract, without fraud or contrivance, will be established both at law and in equity; but any secret agreement between a debtor and a creditor, to secure to the latter payment of a sum beyond that secured to the others, is not only voidable but absolutely void at law, *Cockshott v. Bennett*, 2 T. R. 763; *Jackson v. Lomas*, 4 T. R. 166; *Feise v. Randall*, 1 Esp. 224; and courts of equity will not enforce any agreements securing to some creditors who had executed a deed of composition a greater advantage than the other creditors would have under the deed, and without their knowledge, *Child v. Danbridge*, 2 Vern. 72; *Middleton v. Onslow*, 1 P. Wms. 708; *Mawson v. Stock*, 6 Ves. 300; *Cecil v. Plaistow*, 1 Anst. 202; *Fancett v. Gee*, 3 Anst. 910; and a debtor may recover back money which he has been compelled to pay in consequence of any private bargain with a creditor, *Smith v. Cuff*, 6 M. & S. 160; yet any advantage which a creditor may obtain, not in fraud of the other creditors, has been held to be good, *Feize v. Randall*, 6 T. R. 146; and a preference may be rendered valid in equity by the agreement being notified to the other creditors and sureties, *Jackman v. Mitchell*, 13 Ves. 586. By the 12 & 13 Vict. c. 106, s. 230, it is provided, that where, at two successive meetings of creditors, after due notice given, nine-tenths in number and value of those present agree to accept a composition, the court may annul the adjudication of bankruptcy.

Covenant not to sue.

7. A covenant not to sue the debtor at all is a release, and the covenant may be pleaded in bar of an action; but a covenant not to sue within a given time is not a release, but a covenant, and remedy may be had on the covenant, *Carivil v. Edwards*, 1 Show. 330; *Lacy v. Kinaston*, 1 Ld. Raym. 690; *S. C.* Holt's Rep. 178; *S. C.* 1 Salk. 575; *Dean v. Newhall*, 8 T. R. 168. A condition not to sue a debtor within a named time under a penalty does not extend to the executors, unless they are named in the deed, 1 Show. 331.

Release.

8. A release of partnership debts executed by one partner concludes the firm, contrary to the general rule, that one partner cannot bind another by deed, *Aston v. Booth*, 4 B. Moore, 192. If a release is to be given to only one out of two or more joint debtors, it must be

expressly so stated, otherwise it will operate as a discharge to both, *Solly v. Forbes*, 2 Brod. & Bing. 38. Composition.

9. An assignment by a person not a trader, or not subject to the bankrupt laws, of all his property for the benefit of creditors, is valid, although a preference be given to some creditors above others, *Estwick Caillaud*, 5 T. R. 424; and it be made to defeat a creditor of his execution, *Pickstock v. Lyster*, 3 M. & S. 371. Before the 6 Geo. 4, c. 16, an assignment by a trader of all his estate and effects was held to be an act of bankruptcy, and also fraudulent and void, unless it was done with the concurrence of all the creditors, *Rush v. Cooper*, Cowp. 29; *Law v. Skinner*, 2 Bl. 996; *Eckhardt v. Wilson*, 8 T. R. 140; but, by sect. 4 of that statute, such an assignment executed by all the trustees, within fifteen days after its execution by the trader, provided it were duly advertised and a commission did not issue within six calendar months after its execution by the trader, was not to be deemed an act of bankruptcy. But where the assignment is conditional, and the condition is not performed by the debtor, the creditors may avoid the deed, *Wiglesworth v. White*, 1 Stark. 218. If creditors are to execute a deed of assignment by a stated time, or the deed to be void if it be not executed within the time, it will be void at law; but it is good in equity, if it be afterwards executed by all the creditors, although not until subsequently to the death of the debtor, *Spottiswoode v. Stockdale*, Cooper, 105.

Assignment of a person's property in trust, when valid.

10. Under a provision in a trust deed for the payment of debts of various descriptions, no preference is implied; which, if intended, must be clearly shown, otherwise the court favours equal payments, *Wadeson v. Richardson*, 1 V. & B. 103; but a trust deed for the payment of debts extends only to debts contracted at the time, *Purefoy v. Purefoy*, 1 Vern. 28.

No preference in the payment of debts under a trust deed.

11. A composition deed, or other instrument of composition between a debtor and his creditors, requires a stamp of 1l. 15s., and the further progressive duty of 10s. for every entire number of 1080 words over and above the first 1080; but although signed by each creditor separately, yet being one whole transaction, requires but one stamp, *Bowen v. Ashley*, 1 N. R. 278.

Stamp on a composition deed.

No. CCLXXXV.

Articles of Agreement between a Debtor and his Creditors where Inspectors are appointed to superintend the Insolvent's Affairs.

No. CCLXXXV.
Deed of Inspection.

Obs. As to the nature of this deed, see *supra*, Pref. sect. 1; and as to the stamp, see Pref. sect. 11.

No. CCLXXXV. <i>Deed of Inspection.</i>	<p><i>Articles &c.</i> Between (<i>Debtor</i>) of &c. of the first part (<i>Inspectors</i>) of &c. of the second part and (<i>Creditors</i>) the several other persons whose names and seals are hereunto subscribed and affixed being also respectively creditors agents or attornies of creditors of the said (<i>D.</i>) of the third part <i>Whereas</i> the said (<i>D.</i>) stands indebted to the several persons parties hereto of the second and third parts or their respective partners or constituents in several sums of money <i>And whereas</i> the creditors of the said (<i>D.</i>) being satisfied that the stock and effects in trade of the said (<i>D.</i>) are sufficient to pay his debts did resolve and agree that it would be most advantageous to the creditors of the said (<i>D.</i>) that the said (<i>D.</i>) should be permitted to collect and dispose of his estate and effects under the inspection of the said (<i>I.</i>) who were unanimously chosen for that purpose for the term of two years from &c. last</p>
Recital of debts.	
Meeting of creditors.	
Agreement for an appointment of inspectors.	
Testatum.	<p><i>Now this Indenture witnesseth</i> That in pursuance of the said agreement and in consideration of the covenants hereinafter contained on the part of the said (<i>D.</i>) They the said (<i>I.</i>) and the several other persons parties hereto <i>Do</i> and each of them <i>Doth</i> [so far as they respectively may and lawfully can] give and grant unto the said (<i>D.</i>) full free and absolute liberty and licence to manage collect get in and dispose of all his estate debts and effects under the inspection and control of the said (<i>I.</i>) or some three or more of them and in such manner as they shall judge to be most conducive to the benefit of the said creditors from the day of the date of these presents until the day of</p>
Letter of licence.	
Covenant not to arrest debtor.	<p><i>And</i> each of them the said (<i>I.</i>) and the several persons &c. doth hereby for himself his heirs executors and administrators covenant with the said (<i>D.</i>) his heirs executors and administrators that they the said creditors and the several persons &c. their executors administrators partners or agents or any other person or persons for them or by the order authority assent consent or procurement of them respectively shall not nor will sue arrest prosecute molest attach detain take in custody or execution imprison or otherwise impede or incumber him the said (<i>D.</i>) or his estate or effects in any manner howsoever <i>And further</i> That if any of them the said (<i>I.</i>) or the said other creditors or any of their executors &c. or constituents shall so do contrary to the true intent and meaning of these presents this present letter of licence shall operate to all intents and purposes and may be pleaded in bar to the said respective debts and to any prosecution suit or action that shall or may be brought against the said (<i>D.</i>'s) per-</p>

son goods or chattels as aforesaid within the time aforesaid as effectually as if he had a general release under the hands and seals of such creditors respectively for that purpose *And* the said (*D.*) doth hereby in further pursuance of the said agreement and in consideration of the said licence hereinbefore given unto him as aforesaid for himself his heirs executors and administrators covenant &c. with and to the said (*I.*) and the several other persons parties hereto and other the creditors or partners attornies and agents of creditors of him the said (*D.*) and also with and to each and every of them in manner following that is to say That the said (*D.*) will as soon as may be draw out and state a true and exact account in writing of all his estate and effects as well real as personal and of the several charges outgoings and incumbrances now affecting the same and bring the said estate to a balance and will thereupon deliver such account after being signed by him unto the said (*I.*) *And also* will if thereunto required by them the said (*I.*) or either of them verify the truth of such accounts on oath before one of the Masters of the High Court of Chancery *And further* that he the said (*D.*) will at all times observe perform and execute the orders instructions and advice of them the said (*I.*) *And also* will use his best endeavours about the management and collecting receiving settling and converting into money all the estate and effects of him the said (*D.*) *And also* will when and so often as there shall be monies in hand arising from the said estate and effects pay the same into the hands of such banker and bankers as the said (*I.*) or the survivor of them shall direct in the names of the said (*I.*) or the survivor of them *And further* that he the said (*D.*) will not at any time during the said term [unless he shall before that time have paid unto the said creditors the whole of his debts] convey alienate dispose of pledge or incumber any of his real or personal estate *And also* will not by himself or with any other person become engaged in or undertake any new trade or commercial transaction unless with the consent of the said (*I.*) or the survivor of them *And* will not do or suffer to be done any act deed matter or thing whatsoever whereby any of the creditors of him the said (*D.*) shall or may obtain security (*a*) or securities for his or their debt

No.
CCLXXXV.
*Deed of
Inspection.*

Debtor cove-
nants.

To state his
accounts.

To verify them
on oath.

To obey instruc-
tions.

To use his best
endeavours in
managing his
estate.

To deposit
monies with
bankers.

Not to dispose
of his estate
without consent.

Nor undertake
any other trade.

Nor give pre-
ference to any
creditors.

(a) The courts will set aside all securities whereby one creditor, under contracts of this kind, endeavours to obtain an undue advantage over the rest, *Leicester v. Rose*, 4 East, 271, recognized in *Howden v. Haigh*, 3 P. & D. 661; see further, *ante*, Pref. sect. 6.

No.
CCLXXXV.
*Deed of
Inspection.*

Nor release
debts, &c.

Keep books of
account.

Preserve letters,
&c.

Cash to be
drawn out, &c.
on draft of
debtor for one
inspector.

Inspectors to
distribute
monies.

In paying debts
under £ .

or debts or any preference or priority of payment thereof or of any part thereof contrary to the true intent and meaning of these presents *And* will not realease any debt or debts nor bring any action or suit for recovering any such debt or debts without the licence and consent of the said (*I.*) or the survivor of them *And further* that the said (*D.*) will keep proper books of account and enter or cause to be entered a fair just and regular account of all receipts and payments and of all other transactions matters or things as shall be requisite in order to show the true state and condition of the estate and effects of him the said (*D.*) *And also* shall and will preserve all letters received from and take copies of all letters written or sent by him to all and every his correspondents or other person or persons whomsoever *And also* shall and will permit them the said (*I.*) or either of them to examine and inspect the same accounts papers letters and writings relating to the estate and effects of the said (*D.*) when and as often as they shall think proper *And* it is hereby agreed by and between all the said parties hereto that all the monies bills notes or securities for money arising by or from the estate and effects of the said (*D.*) and from the gains and profits of his said trade [and which shall be paid into such banking-house as aforesaid] shall there remain and not be drawn out except for the purposes hereinafter mentioned unless the said (*I.*) or the survivor of them or the inspector or inspectors for the time being shall in the mean time think it will be for the benefit of the estate of the said creditors to lay out and invest the same in the purchase of government funds or exchequer bills [and which they or he is empowered to do from time to time when and so often as he or they shall think proper] and that all and every sum or sums to be taken out of the said banking-house for the time being for any purpose whatsoever shall be by draft to be signed by one at least of the said (*I.*) or the survivor &c. *And* it is hereby further agreed by and between all the said parties to these presents that it shall be lawful to and for the said (*I.*) or the survivor of them or the inspectors or inspector for the time being out of the monies which shall be paid to their account as aforesaid to pay and discharge all the debts due and owing from the said (*D.*) unto any person or persons whomsoever which do not exceed the sum of £ respectively when the same shall become due *And* shall in the first place pay and satisfy all sums of money which in the judgment of the said (*I.*) or the survivor of them shall be necessary for carrying on the said business of the said (*D.*) as aforesaid

And in the next place shall pay and allow unto the said (D.) such annual sum of money not exceeding £ for his maintenance and support as the said (I.) or the survivor of them or the inspectors or inspector for the time being shall think proper And subject to the payments aforesaid shall and may from time to time when and so often as there shall be in hand money sufficient to answer and pay shillings in the pound upon or in respect of the several debts now due or owing from the said (D.) to the several persons parties hereto of the second and third parts pay and distribute all such monies unto and amongst the several creditors rateably and proportionably according to the amount of their respective debts And after payment of all and singular the aforesaid debts and sums of money and of all the costs charges and expenses occasioned by or attending the execution of the trusts declared by these presents shall pay over the surplus of the said trust monies unto the said (D.) his executors or administrators for his and their absolute use or as they shall direct or appoint And it is hereby further mutually declared and agreed by and between all the said parties hereto and each of them the said creditors or agents &c. of creditors parties hereto doth hereby for himself his heirs &c. severally covenant with the said (D.) that in case all the creditors &c. of the said (D.) who are parties hereto shall not before the day of

have received the whole of their respective debts now due from the said (D.) to the said creditors respectively and if the said (D.) shall on the said day well and sufficiently convey assign and deliver upon oath if required unto such person or persons as shall be named by the majority of the creditors of him the said (D.) at a meeting to be holden pursuant to notice given in the London Gazette for that purpose all such parts of his present estate and effects as shall then remain not divided or otherwise applied according to the true intent and meaning of these presents [he the said (D.) having well and truly observed and performed all and every the covenants and agreements herein contained on his part to be performed and observed except only with respect to the payment of the whole of his debts within the period aforesaid] Then and in such case the aforesaid creditors their executors &c. who are parties hereto will upon such assignment and delivering up respectively duly execute to the said (D.) legal general releases thereby releasing and for ever discharging the said (D.) his heirs executors and administrators from all the debts and sums then due and owing from the said (D.) to such

No.
CCLXXXV.
*Deed of
Inspection.*

Allowance for
the subsistence
of debtor.

Among the rest
of the creditors
rateably.

Surplus to
debtor.

Creditors to
grant release
to debtor.

No.
CCLXXXV.
*Deed of
Inspection.*

Proviso that if
default be made
by debtor, &c.
this agreement
to be void.

creditors respectively and from all accounts actions suits means methods and remedies in law or in equity which they can or may have claim or maintain for recovery thereof *Provided always* nevertheless and it is hereby respectively agreed to be the true intent and meaning of all the said parties hereto that if the said (D.) shall make default in performing all every or any of the said covenants clauses stipulations and agreements hereinbefore contained and covenanted to be performed on his part or if all the creditors of the said (D.) whose debts amount to the sum of £ [except only such creditors who are possessed of any other securities for their debts and choose to rely thereon] shall not by themselves or their respective attornies or agents thereunto legally authorized duly execute these presents or otherwise accede or agree to the terms hereof within the respective spaces of time herein next after mentioned that is to say within next after the date hereof and within Then and in either of the said cases this present indenture and the licence and liberty and every article clause matter or thing herein contained shall cease determine and be utterly void (*add here, if necessary, proviso for appointing new inspectors, indemnity to inspectors, &c. as in the Trust Deed and Assignment of Stock &c.*)

In witness &c.

No.
CCLXXXVI.
*Agreement for a
Composition.*

No. CCLXXXVI.

*Memorandum of an Agreement at a Meeting of Creditors to
accept a Composition.*

Obs. As this is mostly an informal instrument not under seal, it is prudent to stipulate that a more formal deed shall be executed, see Pref. s. 2.

Memorandum. At a meeting of the creditors of A. B. of &c. held at on the day of It is agreed on as follows that is to say That we the creditors whose names are hereunder written have this day severally and respectively agreed for ourselves and for our several and respective executors administrators partners and assigns with the said A. B. his executors and administrators to accept the sum of shillings in the pound in full satisfaction and discharge of our respective debts within the space of calendar months from the date hereof to be secured by notes drawn upon and accepted by C. D. of &c. as the surety of the said A. B. And we the said creditors do

hereby further agree that each of us the said creditors will execute a deed of composition to be forthwith duly prepared within _____ days from the date hereof and will use our best endeavours to induce all the other creditors of the said A. B. to do the same

Witness our hands this _____ day of

A. B.
C. D.
E. F. &c.

No.
CCLXXXVI.
*Agreement for a
Composition.*

No. CCLXXXVII.

Deed of Composition.

No.
CCLXXXVII.
Deed of.

Obs. As to the effect of such a deed, see Pref. s. 6; and as to the stamp, see s. 11.

This Indenture made &c. Between (*Debtor*) of &c. of the first part (*Surety*) of &c. of the second part and (*Creditors*) the several persons whose names and seals are hereunto subscribed and affixed being also respective creditors or agents or attornies of creditors of the said (*D.*) of the third part *Whereas* the said (*D.*) is indebted to the several parties hereto of the third part in the sums of money respectively set opposite to their names and has agreed to pay to the said several persons parties hereto of the third part within the space of _____ days from the date of these presents the sum of _____ shillings in the pound in full of their respective debts And the said (*S.*) having agreed to become surety with the said (*D.*) for the punctual payment of the said sum of _____ shillings in the pound within the time aforesaid They the said several creditors parties hereto have consented and agreed to accept the same in full of their respective debts and to execute and grant unto the said (*D.*) such letter of licence as hereinafter is mentioned *Now this Indenture Witnesseth* That in pursuance of the said agreement on the part of the said (*D.*) and (*S.*) and in consideration of the covenants and agreements on the part of the said persons parties hereto of the third part hereinafter contained each of them the said (*D.*) and (*S.*) *Doth* hereby for himself his heirs executors and administrators covenant with the several persons parties hereto of the third part and each of them their and each of their executors administrators and assigns that they the said (*D.*) and (*S.*) or one of them their

Testatum.

Debtor and
surety covenant
to pay.

No.
CCLXXXVII.
Deed of.

To pay —
shillings in the
pound.

Proviso as to
creditors not
concurring, &c.

Creditors give
letter of licence,

and covenant to
give a release in
general.

Stipulation as to
securities.

or one of their heirs executors or administrators will pay unto the said several parties hereto of the third part their executors administrators or assigns on or before the day of the sum of shillings in the pound upon the amount of their respective debts set opposite to their respective names at the foot of these presents and without any deduction or abatement whatsoever *Provided always* and it is hereby agreed and declared between and by the said parties to these presents That if all the creditors of him the said (D.) whose debts respectively amount to £ or upwards shall not by themselves or their respective agents and attornies duly authorized and appointed for that purpose according to the proviso hereinafter contained duly execute these presents within the space of days to be computed from the date hereof or if the said (D.) shall become a bankrupt *Then* and in either of the said cases this present indenture and every covenant clause and agreement herein contained shall cease determine and be utterly void *And this Indenture also Witnesseth* That in consideration of the covenants and agreements hereinbefore respectively made and entered into by the said (D.) and (S.) for the discharge of the several debts in manner hereinbefore provided for They the said several creditors parties hereto by these presents *Do* and every of them *Doth* give &c. as far as they respectively and lawfully may or can unto the said (D.) full &c. (letter of licence, *see last Precedent*) And the several creditors parties hereto *Do* hereby covenant not to sue &c. (*see last Precedent*) And further that if the said (D.) and (S.) their executors administrators or assigns shall duly (a) observe keep and perform the several covenants and agreements hereinbefore on their parts respectively contained *Then* they the said several creditors of the said (D.) parties hereto will at the costs and charges of the said (D.) his executors or administrators execute and give to him or them a general release and discharge for the said several and respective debts due and owing from the said (D.) And (b) deliver up all

(a) As to the strict performance of the covenants by a debtor, see Pref. s. 4.

(b) As to the necessity of this stipulation, see Pref. s. 5. If the contrary be intended, it must be stipulated in express terms, and then say, "*Provided always* and it is hereby declared and agreed by and between the said parties to these presents that nothing herein contained shall extend to or be construed to extend to prevent the said several creditors their executors &c. (or "the said A. B. or C. D.," *as the case may be*) from commencing any action or actions suit or suits against him the said (D.) for recovering payment of the money which shall or

bonds bills notes and other securities for the same whether given by him or any surety or sureties for him *And moreover* that if the said several creditors or any of them or any of their executors administrators or assigns shall act contrary to the true intent and meaning of these presents Then that this present letter of licence shall and may be pleaded in bar to such debt or debts and sums of money And to any prosecution suit or other action that shall be brought against the said (*D.*) his executors administrators or assigns on account thereof as effectually as if the said (*D.*) had a general release under the hands and seals of such creditors respectively for that purpose.

In witness &c.

No.
CLXXXVII.
Deed of.

No. CCLXXXVIII.

Another (short form).

No.
CCLXXXVIII.
*Deed of,
(Short.)*

To all &c. We whose names and seals are hereunto subscribed and set creditors of (*Debtors*) of &c. send greeting *Whereas* the said (*D.*) are and do stand jointly indebted unto us the said creditors in divers sums of money which they are willing to pay and satisfy as far as they are able *Now know ye* That we the said creditors who have hereto subscribed our names and affixed our seals finding that the said (*D.*) are by losses and otherwise disabled to pay our full debts do severally and respectively agree and bind ourselves our heirs executors and administrators unto the said (*D.*) by these presents to accept of them the said (*D.*) their heirs executors and administrators after the rate of shillings in the pound in full satisfaction of all debts and sums of money which they jointly owe to us and every of us respectively the same to be paid in four equal payments on the days following that is to say on the day of the day of the day of and the day of so as the said (*D.*) for the more sure and better payment of the said several sums of money in satisfaction of our debts as aforesaid their executors or administrators do before the day of become jointly and severally bound with sufficient sureties unto us and every of us respectively by writing or obligation in due form of law to be made

may become due or payable to them the said several creditors respectively upon or by virtue of any notes bills or other securities which they may now hold against the estate of the said (*D.*)”

No.
CCLXXXVIII.
*Deed of
(Short.)*

sealed and delivered to us each and every of us and to each and every of our use *Provided always* that neither these presents nor any thing herein contained shall bind us or any or either of us who have hereunto subscribed our names and put our seals unless all and every of the creditors aforesaid shall have sealed and executed the same on or before the day of next ensuing

In witness &c.

No.
CCLXXXIX.
*Letter of
Licence.*

No. CCLXXXIX.

Letter of Licence from Creditors to a Debtor.

Obs. As to the effect of such a deed, see Pref. sect. 7; and as to the stamp, see sect. 11.

To all to whom these Presents shall come We whose names and seals are hereunto set and affixed respective creditors of (*Debtor*) of &c. send greeting *Whereas* the said (*D.*) is indebted to us the said creditors in divers sums of money which he is at present unable to pay without making sale of his estate and effects to the great prejudice of his trade *And whereas* being satisfied of the integrity of the said (*D.*) and the solvency of his affairs we have agreed to allow him the space of to enable him to pay the said debts *Now know ye* That we the said several creditors of the said (*D.*) severally and respectively and for our several and respective heirs executors administrators partners and assigns but not for each other or for the heirs executors administrators partners or assigns of each other *Do* and each of them *Doth* by these presents give and grant unto him the said (*D.*) free und full licence liberty and authority to attend follow carry on conduct and manage his said trade and business and to transact and attend to all and every his affairs matters and things whatsoever at any place or places within the United Kingdom of Great Britain and Ireland at his free will and pleasure and without any let suit action arrest attachment or other impediment or molestation to be offered or done unto him his goods chattels monies or other effects whatsoever by us or any of us or our respective heirs administrators partners or assigns or by our or their means or procurement for and during the space of months next after the day of the date hereof if the said (*D.*) should so long live *And further* that we the said (*C.*) shall not nor will sue arrest attach or prosecute the

said (*D.*) his executors or administrators for or on account of our or any or either of our debts or demands whatsoever *And moreover* that if any such action arrest attachment or prosecution aforesaid be prosecuted or commenced against the said (*D.*) either in his person goods or chattels within the said term or period by us or any of us or by any other person or persons by or through our or either of our procurement or consent contrary to the true intent and meaning of these presents Then the said (*D.*) by virtue hereof shall be henceforth and for ever acquitted exonerated and discharged of and from all and every the debts claims and demands whatsoever of such of us the said creditors our respective heirs executors administrators partners or assigns by whom or by whose order means or procurement he the said (*D.*) his goods chattels monies estates or effects shall be so arrested imprisoned attached or damnified and this present letter of licence in any or either of the said cases shall be and operate as a release and may be pleaded in bar to the same debts claims and demands and to every such action attachment arrest prosecution or process as aforesaid *In witness &c.*

No.
CCLXXXIX.
*Letter of
Licence.*

—◆—

No. CCXC.

Release from Creditors to a Debtor under a Composition.

No. CCXC.
Release.

As to stamp, see Pref. sect. 11.

To all &c. (see *last Precedent*) We &c. creditors of (*Debtor*) of &c. send greeting *Whereas* the said (*D.*) being unable to pay and satisfy the whole of our respective demands hath proposed to pay to us his several creditors the sum of shillings in the pound upon the amount of our respective debts being the sums set opposite to our respective names which we do hereby declare to be the full amount of our respective demands against him the said (*D.*) his estate and effects *And* we the said creditors have consented to accept such composition in full discharge of our respective demands and to execute such release as is hereinafter mentioned and contained *And whereas* we the said several persons whose names are hereunder written have respectively received the several sums of money set opposite to our respective signatures

Now therefore know ye That for the consideration aforesaid we the said several creditors *Do* and each of us who have hereunto

Recital.

Release.

No. CCXC.
Release.

set our hands and seals *Doth* by these presents remise release and for ever discharge the said (*D.*) his heirs executors and administrators and their and each of their lands goods and chattels of and from and against all debts claims and demands whatsoever as against him the said (*D.*) which we ever had or could claim or demand and also of and from all and singular the covenants conditions and agreements and also all actions and suits and causes of action and suit which we now have or ever had or can or may have against the said (*D.*) his executors administrators or assigns in respect of our said debts or any other matter cause or thing whatsoever concerning the same from the beginning of the world to the day of the date hereof *In witness* &c.

Debt	Signature	Seal	Composition
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No. CCXCI.
Release.

No. CCXCI.
Indenture of Release from Two Creditors to One of Two Partners.

Obs. As to the effect of a release to one partner, see Pref. sect. 8.

This Indenture made &c. Between (*Releasors*) of &c. and (*Releasee*) of &c. of the other part *Whereas* the said (*releasee*) carried on the trade or business of a merchant in partnership with I. F. of &c. under the firm of F. and E. *And whereas* there were various transactions between the said (*releasors*) and the said F. and E. and the said F. and E. having become embarrassed in their affairs stopped payment and upon the balance of accounts between the said F. and E. and the said (*releasors*) the said F. and E. stood indebted unto the said (*releasors*) in a considerable sum of money *And whereas* the said E. lately offered and proposed to the said (*releasors*) to pay to them the sum of £ if the said (*releasors*) would give and execute unto the said E. a release or discharge for or in respect of the aforesaid debt or demand on the said F. and E. and they agreed to give such discharge subject to the provisoes and restrictions hereinafter contained *New this Indenture witnesseth* That in consideration of the sum of £ to the said (*releasors*) in &c. paid by the said (*releasee*) at &c. the receipt &c. And also in consideration of promissory notes given and made payable to the said (*releasors*) their executors administrators or assigns the receipt of which

said notes (making together with the sum of £ so paid as aforesaid the sum of £) they the said (*releasors*) do hereby respectively acknowledge And pursuant to and in execution of the said agreement They the said (*releasors*) *Do* and each of them *Doth* hereby remise &c. (see *last Precedent*) *Provided nevertheless* and it is hereby declared and agreed by and between the parties to these presents and the true intent and meaning of them and of these presents or any matter or thing herein contained shall not release or be construed to release or in any manner to prejudice or affect any claim or demand which the said (*releasors*) or either of them have or ever had or which they or either of them or either of their executors administrators or assigns hereafter shall can or may have upon or against the said F. or upon or against the joint estate or effects of the said F. and E. in respect of the debts so due from the said F. and E. or any part of such joint estate or effects whether the same shall be in the hands of or recoverable from F. and E. or either of them or from any other person or persons whomsoever *And* that it shall and may be lawful for the said (*releasors*) their executors administrators and assigns from time to time when and as they shall be thereto advised to commence and prosecute any actions suits or other proceeding either at law or in equity against the said E. jointly with the said F. or against the said E. his executors administrators or assigns separately for the purpose of recovering or compelling or of enabling the said (*releasors*) their executors administrators or assigns to recover or compel payment or satisfaction of the debt so due and owing from the said F. and E. to the said (*releasors*) as aforesaid either by or out of the joint estate of the said F. and E. or by or from the said F. his executors administrators or assigns or his separate estate and effects *Provided always* and it is hereby further declared and agreed by and between the parties to these presents and it is the true intent and meaning of them and of these presents that in case default shall be made in the due payment of any two of the before mentioned promissory notes successively to fall due in such manner that any two of the promissory notes shall be due and unpaid at the same time Then and in such case these presents and every matter or thing herein contained shall from and immediately after such default be absolutely void and of no effect And the said sum of £ and all and every other sum or sums of money which may at any time be paid in discharge of any of the said promissory notes shall be carried to the account of the said F.

No. CCXCI.
Release.

Proviso that
creditors may
sue the partners.

No. CCXCI.
Release.

and E. with the said (*releasors*) and all the debts claims and demands of the said (*releasors*) their executors administrators and assigns by reason or in respect of the default hereinbefore mentioned to be due to them from the said F. and E. either upon or against F. and E. jointly or separately their or either of their executors or administrators shall from and immediately after such default be in full force and virtue as to so much of the debt so due to the said (*releasors*) as aforesaid as shall remain unpaid in like manner to all intents and purposes as if these presents had not been made anything herein contained to the contrary thereof in anywise notwithstanding *In witness &c.*



No. CCXCII.
*Memorandum
indorsed on
Release.*

CCXCII.

Memorandum indorsed on the above Deed of Release.

This deed is deposited by the within-named (*Releasors*) and by G. B. of &c. on the part of the within-named (*Releasee*) with E. L. of &c. who is to deliver it to (*releasee*) his executors or administrators or to his or their order after due payment of the within-mentioned promissory notes according to the tenor and meaning of the within-written indenture of release but in case of any default in payment of the promissory notes or any of them according to the tenor and meaning of the within-written indenture E. L. is to deliver up the indenture to the said (*releasors*) their executors or administrators to be cancelled In the mean time the indenture is to remain in the hands of the said E. L. for the purposes aforesaid.



CONVEYANCES IN TRUST FOR CREDITORS.

- | | |
|--|--|
| 1. <i>Validity of Deed or otherwise.</i> | 5. <i>Receipts of Trustees valid Discharges.</i> |
| 2. <i>Power of Sale to Survivors.</i> | 6. <i>Liability of Purchaser.</i> |
| 3. <i>Delegating Trust.</i> | |
| 4. <i>Power to sell or mortgage.</i> | |



Validity of deed
or otherwise.

SECT. 1. A conveyance for the payment of debts generally, to which no creditor is a party, and in which no particular debts are expressed,

has been held to be a fraudulent conveyance within the 27 Eliz. c. 4, as against a purchaser for valuable consideration, *Leech v. Leech*, 1 Chan. Ca. 249; but where a debtor between judgment and execution made an assignment of all his effects to trustees for the benefit of all his creditors, this was held not to be fraudulent and void under the 13 Eliz. c. 5, although not signed by any of the creditors, see *Pickstock v. Lyster*, 3 M. & S. 371.

Conveyances in Trust for Creditors.

2. A power of sale given to two or more trustees will not survive, unless it be expressly so stipulated by the deed, *Townsend v. Wilson*, 3 Madd. 261; *S. C.* 1 B. & A. 608.

Power of sale to survivors.

3. As trustees cannot delegate their power, it may be sometimes prudent to give them express authority to that effect.

Delegating trust.

4. As it is doubtful whether, under a trust to raise money by sale or mortgage, the trustees having mortgaged can afterwards sell to pay off that mortgage, *Palk v. Lord Clinton*, 12 Ves. 48, it may be proper to provide for this event in the deed.

Power to sell or mortgage.

5. Under the usual clause, that the receipts of trustees shall be valid discharges, it is necessary for all the trustees to join in the discharge: where a trustee has only released to his co-trustee, and not absolutely renounced his trust, it has been held, that his signature is necessary to make a valid discharge, *Crew v. Dicken*, 4 Ves. 97.

Receipts of trustees valid discharges.

6. Where an estate is to be sold for the payment of debts generally, the purchaser is not bound to see to the application of the purchase-money; but where the debts are scheduled, he is bound so to do, unless the deed, from the terms of it, exonerates him.

Liability of purchaser.

No. CCXCIII.

Conveyance of Freeholds in Trust for Creditors where the Debtor is a Trader. (General Precedent).

No. CCXCIII.

Conveyance in Trust for Creditors.

This Indenture made the &c. Between (Debtor) of &c. (a) of the one part (Trustees) of &c. creditors of the said (D.) and trustees named and appointed on behalf of themselves and the other creditors of the said (D.) for the purposes hereinafter mentioned of the other part Whereas (recite seisin) And whereas the said (D.) is indebted to various persons in divers sums of money on or other securities which he is desirous of discharging and hath agreed for the more speedy payment thereof to convey the several lands and hereditaments hereinafter

(a) If the debtor is possessed of an estate in right of his wife, or is tenant in tail, as to parties, see DISENTAILING DEEDS.

No. CCXCIII. described to the said (*T.*) in trust to sell *Now this Indenture witnesseth* That in pursuance of the said agreement He the said (*D.*) Doth by these presents grant and convey unto the said (*T.*) and their heirs *All those* messuages &c. together with all houses &c. And all the estate &c. of him the said (*D.*) in to &c.

Conveyance in Trust for Creditors.
 Testatum. *To Have and to Hold* the said messuages lands hereditaments and all and singular other the premises hereby granted unto the said (*T.*) their heirs and assigns for ever upon the trusts and to and for the intents and purposes and under and subject to the powers provisoes declarations and agreements hereinafter declared concerning the same that is to say *Upon Trust* that they the said (*T.*) or the survivors or survivor of them or the executors or administrators of such survivor shall without any further consent of the said (*D.*) his heirs executors or administrators immediately or at any time or times after the sealing and delivery of these presents make sale of all the said messuages and tenements lands hereditaments and premises hereby granted or otherwise assured or intended so to be or any of them or any part or parts thereof as they shall think fit either together and in one lot or parcel or in separate lots and parcels and either by public sale or private contract or partly by public sale and partly by private contract for such price or prices sum or sums of money as the said (*T.*) or the survivors &c. shall think fit with full power to buy in all or any part of the said hereditaments and premises which shall have been put up to sale by public auction and to resell or offer them again to sale in all or any of the modes aforesaid without being liable in any of the said cases to answer for any loss or diminution in price which may happen thereby *And also* with like power and authority to convey and assure to any person or persons who shall become the purchaser or purchasers of the said messuages or any part thereof in such manner and form as he or they shall direct or appoint *And* in the mean time and until such sale or other disposition shall be made and as to such parts as remain unsold or undisposed of *Upon Trust* that they the said (*T.*) or the survivor &c. shall enter into and upon all and singular the same hereditaments and premises and receive and take the rents issues and growing proceeds and also all arrears of rent and all and every sum and sums of money which are now due to the said (*D.*) from all and every the lessee or lessees of the said (*D.*) *And* it is hereby declared and agreed by and between the parties hereto that all contracts agreements sales dispositions and conveyances acts deeds matters

Habendum.

Trust to sell.

To receive rents until sale.

Contracts entered into by trustees to be valid.

and things whatsoever which shall or may be entered into made done or executed by the said (*T.*) or the survivors &c. shall be as valid as if he the said (*D.*) had joined or concurred in the same And it is hereby further agreed and declared by and between the said parties hereto so far as they are respectively interested or concerned that the receipt and receipts of the said (*T.*) or the survivors &c. shall be a good discharge and good discharges to any purchaser or purchasers lessee or lessees or any of them for so much as shall be therein expressed or acknowledged to be received And that all persons paying the same shall not afterwards be answerable or accountable for the loss misapplication or nonapplication thereof or of any part thereof And it is hereby further declared and agreed that the said (*T.*) and the survivors &c. shall stand possessed of and be interested in all and every the sum and sums of money which shall or may arise or come to their hands by any sale or disposition and out of the rents issues or other proceeds thereof Upon the several trusts and to and for the several ends intents and purposes and under and subject to the several provisoes restrictions declarations and agreements which are declared contained and expressed of or concerning the same in or by a certain indenture bearing even date with these presents and made between the said (*D.*) of the first part the said (*T.*) of the second part and the several other persons therein named as creditors of the said (*D.*) of the third part And the said (*D.*) for himself his heirs executors and administrators doth hereby covenant with and to the said (*T.*) their heirs executors and administrators in manner following &c. (see *covenant for title to freeholds*, PURCHASE DEEDS, *General Precedent*).

No. CCXCIII.
*Conveyance in
Trust for
Creditors.*

Trustees' receipts to be valid discharges.

Declaration of trusts.

No. CCXCIV.

A Trust Deed for the Benefit of Creditors, to accompany a Deed of Conveyance or Assignment. (General Precedent.)

No. CCXCIV.
Trust Deed.

Obs. 1. As to the effect of this deed, see Pref. COMPOSITION, sect. 10, and Pref. *last Precedent*; and as to the stamp, see Pref. COMPOSITION, sect. 11.

2. Trustees are not chargeable for the acts or receipts of one another; and although there are not negative words in a deed to that effect, yet courts of equity will not make them liable; but if they will bind themselves, the court will not relieve them, especially in a case of composition of debts, *Leigh v. Barry*, 3 Atk. 582.

Liability of trustees.

No. CCXCIV. 3. Although trustees are entitled to all fair allowances for what they
Trust Deed. have actually expended, yet the usual clause for reimbursement is
 Reimbursement very necessary, particularly when the *cestui que* trust aliens the estate,
 to trustees. *Trott v. Dawson*, 1 P. Wms. 779; 7 B. P. C. 266.

This Indenture made &c. Between (*Debtors*) of &c. bankers
 and copartners of the first part (*Trustees*) of &c. of the second
 part and the several persons whose names and seals are hereunto
 set and affixed of the third part *Whereas* the said (*D.*) lately
 carried on the business of bankers as aforesaid under the firm of
 &c. *And whereas* the said (*D.*) became and now are indebted
 on their said partnership account unto the said several persons
 parties to these presents of the third part in several sums of
 money or engagements to replace bank stock or other property
 And the said (*D.*) are also severally indebted on their own
 private and separate account unto some of the said several
 persons who are or are intended to be parties to these presents
 And the said (*D.*) being unable at present to pay and discharge
 the full amount of the debts owing by them as aforesaid it was
 lately proposed and agreed by and between all the parties hereto
 that the said (*D.*) should convey and assign all the estate and
 effects belonging to them on account of their said partnership
 and also that each of them should convey assign and transfer all
 the estate and effects belonging to him as his separate property
 to the said (*T.*) their heirs executors administrators or assigns
In Trust and for the purposes hereinafter mentioned *And*
whereas by indenture bearing even date with these presents and
 made &c. the freehold copyhold leasehold and personal estate
 of the said (*D.*) have been conveyed assigned and cove-
 nanted to be surrendered by them respectively unto and to
 the use of the said (*T.*) their heirs executors administrators or
 assigns *In Trust* nevertheless to make sale of the same under the
 powers in the now reciting indentures contained and to pay
 apply and dispose of the produce of such sale upon the trusts
 and to and for the ends intents and purposes hereby referred to
 being the same trusts ends intents and purposes declared and
 contained in these presents *Now this Indenture witnesseth* That
 in pursuance of the said agreement and for carrying the same
 into effect the said parties to these presents do hereby declare it
 to be the true intent and meaning of them and these presents
 that the said (*T.*) and the survivors or survivor of them and the
 executors administrators and assigns of such survivor shall stand
 and be possessed of and interested in all and singular the monies

Recital of busi-
 ness carried on
 in partnership.

Of carrying on
 business.

Of conveyance
 to trustees.

Testatum.

Declaration of
 trusts.

to arise by such sale of the said freehold copyhold leasehold and personal estate and effects of the said (*D.*) conveyed and assigned to them the said (*T.*) their heirs &c. as hereinbefore mentioned and also of and in the rents of the said freehold copyhold and leasehold estate in the mean time until such sale thereof *Upon the Trusts* and for the intents and purposes hereinafter declared of and concerning the same that is to say *Upon Trust* that they the said (*T.*) or the survivors or survivor of them or the executors administrators or assigns of such survivor do and shall in the first place deduct retain and reimburse to himself and themselves all usual outgoings for rent taxes repairs salaries of clerks and agents and all such other costs charges and expenses as he and they respectively shall or may pay incur or be put unto in the execution of the trusts by these presents respectively and by the said indenture reposed in him and them *And* in the next place do and shall apply the clear residue of the produce of the separate estate of each of them the said (*D.*) respectively or a competent part thereof in payment of the debts owing by him separately to such of the creditors as have executed or shall execute these presents or their respective executors administrators assigns agents or attornies and in proportion to the amount of the debts owing them respectively without any priority or preference until each of the said creditors respectively or his or her executors &c. shall have received the full amount of the debts owing to him her or them and do and shall apply the residue or surplus (if any) of the produce of the separate estate of each of them the said (*D.*) in aid of the partnership fund for the payment of the partnership debts until each of the said partnership creditors who have executed or shall execute these presents his or her executors &c. shall have received the full amount of the debts owing to him her or them respectively and do and shall apply the surplus (if any) of the share of each of them in the clear residue of the partnership effects in or towards such of his separate debts for which provision is hereby made as shall not have been discharged out of the clear residue of his separate estate in manner and pursuant to the directions hereinbefore contained in that behalf *And* lastly do and shall pay to each of them the said (*D.*) his executors administrators or assigns the clear residue or surplus (if any) of the produce of his separate estate as also of the surplus (if any) of his share of the produce of the partnership effects subject nevertheless to the provision hereinafter contained *i. e.* in case any one or more of

No. CCXCIV.
Trust Deed.

To pay rent,
taxes, salaries,
&c.

To apply separate estate to the
payment of separate debts.

Pay partnership
debts,

and surplus (if
any) to the several debtors.

No. CCXCIV. Trust Deed. the said (D.) is are or shall become a creditor or creditors of the other or others of them either by having paid or paying out of the produce of his effects or otherwise debts or the share of debts payable by the other of them Then and in that case such of them the said (D.) as shall be a creditor or creditors shall receive out of the surplus which would have belonged to such of them as shall be a debtor or debtors as aforesaid the money which shall be owing to him or them as aforesaid any thing hereinafter contained to the contrary thereof in anywise notwithstanding *Provided always* and it is hereby declared and agreed by and between all the parties to these presents that in case there shall be any sum or sums of money owing or to be paid by the said (D.) on bills or otherwise which are not yet payable it shall and may be lawful for the said trustee or trustees for the time being to pay the same sums or a dividend thereon on being allowed discount or rebate for the time which shall remain unexpired at the time of the payment of the same sums of money in the same manner as if the same debts had been proved or claimed under a fiat of bankruptcy *Provided also* that it shall and may be lawful for the trustee or trustees for the time being if he or they shall think proper out of the trust or any other monies which shall come to his or their possession under or by virtue of the grant and assignment and covenant to surrender bearing even date with these presents to satisfy and discharge the extents at the suit of the Crown which have been awarded against the estate and effects of the said (D.) And also after paying thereout all such costs charges and expenses as are hereinafter directed to be raised to pay the several creditors of the said (D.) or of any of them whose debts respectively do not exceed the sum of £ each the full amount of such debts nevertheless with this restriction that the proceeds of the partnership effects as far as the same will extend shall be applied in payment of such only of the same debts as are owing on the said partnership account and that the proceeds of the separate estates of each of them the said (D.) so far as the same will extend shall be paid and applied in payment of such of the same debts as are owing by each of them the said (D.) respectively upon his separate account [but the partnership property or the proceeds thereof may by way of loan to the separate estate of the said (D.) be applied in payment and discharge of the money to be levied on the said extents] And that it shall and may be lawful for the said (D.) or the survivor &c. or the trustee or trustees for the time being if he or they shall

Provision as to the discharging bills before they are due.

To discharge extents.

To discharge debts not exceeding the sum of £ .

Power to compound with creditors &c.

see occasion and in his and their discretion think it expedient to settle and agree with any of the creditors of the said (*D.*) jointly and severally whose respective debts do not amount to £ and to make them such payments or compensation for the same by way of composition as they may respectively agree to accept *Provided always* that if at any meeting of the creditors to be convened for the purpose by fourteen days' notice in the London Gazette (*stating the day and place of such meeting*) it shall be deemed expedient by the major part in value of the creditors then present and it shall be then and there resolved and determined that the power and provision lastly hereinbefore contained shall be released and abandoned or shall be enlarged and extended as to the amount of the debts to be comprehended within such provision Then and in such case the same shall be either released and abandoned by the said trustee or trustees for the time being and shall thenceforth cease and be void to all intents and purposes whatsoever but without prejudice to any composition or agreement previously made under or by virtue of the same provision or as the circumstances of the case shall require the trustee or trustees for the time being shall be at full liberty and have full power and authority to act under such enlarged or extended power of compounding debts as the case may be And also to pay to and for all or any of the creditors of the said (*D.*) either jointly or severally who by reason of infancy or other disability cannot legally or without breach of trust accede to these presents the full amount of the debts owing to the same respectively and also to appropriate and set apart the amount of the debts owing to creditors in India or in parts beyond the seas who shall not before a final dividend shall be made accede to and execute these presents *And finally* if it shall be deemed necessary or expedient to retain such sum or sums of money as shall be required to answer the full amount of the debts in respect of which such appropriation is to be made the balance or surplus of debts (if any) after satisfying the debts of the creditors residing abroad or so much of the same debts as the trustee or trustees for the time being shall think fit to satisfy shall be applied in the same or like manner as the residue of the produce of the said trust estates *Subject* nevertheless to the provision hereinafter contained that is to say *Provided also* and notwithstanding any thing hereinbefore contained it shall and may be lawful for the said trustee or trustees for the time being to compromise settle and ascertain the amount of the debt or debts claimed by the

No. CCXCIV.
Trust Deed.

Proviso that creditors may release or extend the power of compounding debts.

To set apart debts of creditors abroad.

No. CCXCIV. creditor or creditors respectively and also the fund on which the
Trust Deed. party or parties is are or ought to be deemed a creditor or
creditors and also to separate distinguish and allot the separate
property from the partnership property according to the best of
his or their judgment for the purpose of dividing the final residue
or surplus (if any) between the said (*D.*) and their representative
or representatives *Provided also* and it is hereby declared and
agreed that any creditor or creditors who hath or have any
security for his her or their debt or any part thereof shall or may
execute these presents without prejudice to the same security or
securities with the consent of the trustee or trustees for the time
being and convert the same into money and receive a dividend
rateably with the other creditors for so much of the same debt
or debts as shall not be answered and paid out of the proceeds
of the same security or securities And that the trustee or trustees
for the time being shall or may in his or their discretion com-
pound any debt or debts owing to the said (*D.*) or any one or
more of them and accept part thereof or give further time for
payment of the same debt or debts and shall or may sue or
refrain from suing for any debt or debts as they shall think proper
or sign a certificate of any person or persons indebted to the
said (*D.*) who are or may become bankrupt And that the trustee
or trustees for the time being shall or may make any arrange-
ment he or they shall deem proper with any person or persons
holding any securities given by the said (*D.*) or any of them for
the purpose of procuring possession of the lands and property
comprised in any mortgage made or security given so nevertheless
as that the consideration or price given upon such arrangement
shall not exceed the amount or value of the principal and interest
And further that the said trustee or trustees for the time being
shall and may sell all or any part of the trust property for money
to be paid at a future day or upon credit or for security or secu-
rities by way of bills of exchange or otherwise as he or they
shall think advantageous And shall or may sell or convert into
money all contingent interests and securities which cannot imme-
diately be enforced with a prospect of advantage and all debts
which shall be deemed bad or doubtful or which cannot be col-
lected in within reasonable time And shall and may be at liberty
at any auction or auctions to buy in all or any part of the trust
property which shall be offered for sale and to resell the same
at any future auction or by private contract without being
liable to answer for any loss or diminution of price upon

Provision as to
creditors having
securities.

Power to com-
pound debts
owing to the
debtors.

To sell upon
credit.

such resale *And* it is hereby further declared and agreed that in case any doubt or difficulty shall arise in ascertaining the amount of any sum or sums of money due or payable to any creditor or creditors of the said (*D.*) either on their partnership or separate account Then and in every such case the full and exclusive power of ascertaining the amount of the same debt or debts respectively shall be referred to such person or persons as the said trustee or trustees for the time being on the one part and the creditor or creditors the amount of whose debt or debts shall be called in question of the other part shall appoint for that purpose *And* that the award and determination of the person or persons so appointed shall be final and conclusive on all persons entitled to any interest or benefit under these presents *And* that all differences which shall arise respecting the amount of any debt or debts owing to the said (*D.*) or any one or more of them jointly or separately or touching or concerning any property claimed as their or any or either of their effects or belonging especially to any of their creditors shall be settled in the same or like manner if the said (*T.*) or &c. shall think it proper and requisite to settle the same *And* it is further provided and agreed that the trustee or trustees for the time being shall and may rent and hire such places and employ such persons and at such salaries as he or they shall think proper and necessary for carrying on the affairs of the trust and at the expense of the trust estate *And also* in case it shall be deemed expedient to defend any action or suit touching or concerning the trust estate the trustee or trustees for the time being shall or may exercise his or their discretion in commencing and defending the same and shall or may retain all costs charges and expenses in anywise relating thereto by and out of the monies which shall be received by him or them by virtue of the trusts aforesaid *And further* that it shall and may be lawful for the trustee or trustees for the time being to give and deliver to each or any or either of the said (*D.*) either the use for a time to be limited or the absolute property of all or any part of the household furniture and linen of each of the said (*D.*) anything hereinbefore contained in anywise to the contrary notwithstanding *And* it is hereby declared and agreed that the receipt and receipts of the trustee or trustees for the time being shall be a full and effectual discharge and full and effectual discharges to all persons who shall become purchasers of the estate and effects of the said (*D.*) to be conveyed and assigned and covenanted to be surrendered by the said indenture

No. CCXCIV.
Trust Deed.

To refer disputes to arbitration.

Power to rent offices, hire clerks, &c.

To defend actions, &c.

To allow debtors the use of household furniture, &c.

Receipts of trustees to be valid discharges.

trusts reposed in them as aforesaid act to the best of their judgment for the benefit and advantage of all the persons interested in the same trust *Provided always* and it is hereby further declared and agreed that when all the trusts hereby reposed in the said (*T.*) or the survivors &c. shall be fully executed and performed as far as the same shall in the opinion of the trustee or trustees for the time being be practicable the said trustee or trustees for the time being shall call a meeting of the creditors of the said (*D.*) by fourteen days' notice &c. and at such meeting shall and will produce their account respecting the trusts hereby in him and them reposed for the inspection of the creditors present at such meeting And that the major part in value of the creditors so present shall have full power by their resolution to allow the same accounts and that when so allowed they shall be binding and conclusive on all parties interested therein And that the same major part of the creditors shall also have full power to declare the trustee or trustees for the time being fully acquitted and released and he and they accordingly shall be acquitted and released from the trusts reposed in him and them and the trust accounts finally closed subject nevertheless to any payment by way of final dividend of the trust money then in hand *Provided always* and it is hereby declared and agreed by and between the parties to these presents that in case of the death of any one or more of the said (*T.*) or in case any of them shall refuse decline or be incapable to act Then and in either of these cases it shall and may be lawful for the major part of the creditors of the said (*D.*) to be present at any meeting held pursuant to notice in the London Gazette to nominate and choose such person or persons as they shall think fit to be a trustee or trustees in the place of such trustee or trustees as shall die refuse decline or be incapable to act and every such person so to be chosen shall have the like power authority and control as any of them the said (*T.*) have or can or may have by virtue of these presents *And further* that the said (*T.*) or the survivors &c. or the trustee or trustees for the time being shall be charged and chargeable only for such monies as the same trustee or trustees respectively shall actually receive by virtue of the trusts hereby reposed in him or them notwithstanding his their or any of their giving or signing or joining in giving and signing any receipt or receipts for the sake of conformity And that any one or more of them shall not be answerable or accountable for the other or others of them but each and every of them respectively for his own acts deeds and neglects or defaults only And that they or any or either of them

No. CCXCIV.
Trust Deed.

Trustees to be
released.

Appointment of
new trustees.

Indemnity to
trustees.

No. CCXCIV. shall not be answerable or accountable for any banker broker or other person with whom or in whose hands any part of the trust monies shall or may be deposited for safe custody or otherwise in the execution of the trusts hereinbefore mentioned or for any person or persons who shall be employed to assist them as aforesaid in the execution of the said trusts or for any other misfortune loss or damage which shall or may happen to the trust estate in the execution of the aforesaid trusts or in relation thereto unless the same shall happen by or through their own wilful negligence or default only *And also* that it shall and may be lawful for the said (T.) and the survivors &c. by and out of the monies which shall come to their hands by virtue of these presents to retain and reimburse himself and themselves respectively and also to allow to his and their co-trustee or co-trustees all costs charges damages and expenses which they or any of them shall or may suffer sustain expend disburse be at or put unto in or about the execution of all or any of the aforesaid trusts or otherwise by virtue of these presents *Provided always* and it is hereby declared and agreed by and between the parties to these presents that in case any question matter or thing shall arise in the management regulation or conduct of the affairs of the said (D.) or any or either of them which is not distinctly and clearly provided for by these presents and by the said indenture of &c. or in case the trustee or trustees for the time being shall not be able to determine and agree upon the course of conduct to be pursued in the management of the said trusts Then and in every such case it shall and may be lawful for the trustee or trustees for the time being to call a meeting of the creditors of the said (D.) by fourteen days' notice in the London Gazette and to submit such question matter or thing to the consideration of the creditors who shall or may be present at such meeting and that the determination of the major part in value of the said creditors present at such meeting respectively shall be binding and conclusive on all parties entitled to any benefit under the trusts hereinbefore expressed and declared *And further* that if any question shall arise upon the true construction of these presents or of any clause or provision herein contained the same shall be submitted to Esquires Lincoln's Inn and the opinion of them or any two of them shall be binding and conclusive *Provided always* and notwithstanding all or any of the provisions hereinbefore contained the said (D.) shall as to the balance of the accounts subsisting or to arise between them as partners or

Trust Deed.

Trustees to reimburse themselves.

To refer doubtful matters to a meeting of creditors.

Insolvents to stand in the same relation to each other

on account of the partnership either by any payments made or hereafter to be made by any or either of the said partners or out of his or their effects beyond his or their proportional part or parts be in the same situation in all respects and have the same and like remedies as near as may be as he or they respectively would have had as to and against any one or more of them his or their executors or administrators in case they had become and had been declared bankrupt under a fiat and each of them had severally obtained his certificate under the same fiat so that on the one hand no one or more of them the said (*D.*) his or their heirs executors or administrators may remain liable to the other or others of them his or their heirs &c. for any debt or duty which would have been discharged or relieved by such fiat of bankruptcy and certificate thereunder and so that on the other hand no one or more of them his or their heirs executors or administrators may be discharged from any debt or duty to which he or they would have been liable in case of such bankruptcy and certificate under the same *And* each of them the said (*D.*) for himself his heirs executors and administrators and as to and concerning only the acts deeds and defaults of himself his heirs &c. doth hereby covenant &c. with and to the said (*T.*) and each of them their and each of their executors and administrators that they the said (*D.*) respectively have at or before the time of their respective executions of these presents made a true and faithful account and discovery to the trustees of all the estate effects and property real and personal belonging to them as well on their partnership as on their respective private accounts and that they have not concealed withheld or embezzled any part or parts thereof and that the said books of account signed by the said (*D.*) respectively and delivered up to the said (*T.*) at the time of the execution of these presents do contain a just and true account of all the partnership and private estate effects and debts of them the said (*D.*) respectively as far as it is in their power to make out the same accounts *And* that they the said (*D.*) any or either of them shall and will at any time or times hereafter when thereunto requested make such discoveries in relation to and such explanations of their affairs as the said (*T.*) and the survivors &c. shall require and shall and will assist the trustee or trustees for the time being in conducting and managing the concerns of the said trust estate in such manner as to the said trustees shall seem reasonable *And further* that if any or either of them the said (*D.*) has wilfully concealed or shall wilfully conceal any

No. CCXCIV.
Trust Deed.

as in case of
bankruptcy.

Covenants from
debtors,

that they have
made out a true
account of their
estate;

will assist the
trustees in
managing the
concerns.

No. CCXCIV.
Trust Deed.

Letter of
 licence.

On certificate
 of conformity,
 debtors to be
 discharged from
 their debts.

part of his partnership or private property to the value of £ or shall be guilty of any wilful breach or default in performance of his covenants herein contained or any of them Then and in that case on demand thereof made by any one or more of the said creditors parties hereto of the second and third parts his her or their executors or administrators the person or persons by whom such concealment breach or default has been or shall be made his or their heirs executors or administrators shall and will answer and pay to all and every the same creditor or creditors respectively his her or their executors administrators or assigns the full amount of the debts owing to the same creditor or creditors respectively or so much thereof as shall not have been previously received by him her or them under the trusts hereinbefore declared and contained *And this Indenture further witnesseth* That in consideration of the presents they the said several parties of the second and third parts *Do* and each of them *Doth* give and grant from the execution of these presents henceforth until the trustee or trustees for the time being by any writing under his or their hand or hands to be indorsed on these presents or a duplicate thereof shall declare the benefit of this present provision so to be forfeited or otherwise determined and at an end by the non-conformity or misconduct of him or them the said (*D.*) full and free liberty &c. (see *ante*, *Letter of Licence*) and that if the said (*T.*) or (*C.*) shall molest or interfere with the persons or effects of the said (*D.*) or any or either of them otherwise than in the execution of the trusts aforesaid and contrary to the true intent and meaning of these presents then the said (*D.*) or such one or more as shall be so molested as aforesaid or his or their heirs executors or administrators shall thenceforth be and by these presents he and they is and are clearly and for ever acquitted exonerated and discharged of and from all actions suits debts covenants securities claims and demands whatsoever at law and in equity of the creditor or creditors by whom they the said (*D.*) or any or either of them shall be so molested as aforesaid and that this present letter of licence &c. *And further* that when and so soon as the said (*T.*) or the survivor &c. or the trustee or trustees for the time being shall by writing under his or their hand or hands to be indorsed upon these presents certify that the said (*D.*) have conformed themselves in all respects to their satisfaction so as to be entitled to be discharged from their debts then and immediately after such certificate shall be indorsed thereon and signed by the trustee or

trustees for the time being they the said (*D.*) their executors and administrators shall thenceforth be absolutely discharged of and from all and singular the debts and sums of money and other demands whatsoever which are now due and owing or secured or payable by or from the said (*D.*) to the said creditors in the way of their business and also upon their private or separate accounts respectively or upon or by virtue of any security or securities or any other consideration or account whatsoever and also of and from all and all manner of actions suits proceedings damages costs charges and expenses dues debts reckonings accounts claims and demands in anywise relating thereto *And further* that they the said creditors parties hereto of the second and third parts or any or either of them or their executors or administrators or partners shall not nor will for or in respect of any debt or demand now due or owing to them or any or either of them arrest or attach the person or goods of any or either of them the said (*D.*) in whose favour such last mentioned certificate or certificates shall have been signed nor take his or their person or persons or his or their real or personal property in execution nor sue him or them in whose favour such last mentioned certificate shall have been signed in any other manner than for conformity only And also that in case the person or persons in whose favour such last mentioned certificate or certificates shall be signed shall appear to any action or actions suit or suits in which he or they shall be named for conformity or shall suffer the plaintiff or plaintiffs in such action or actions suit or suits to enter (as he she or they is and are hereby authorized to do) an appearance or as the case may be file common bail for the person or persons in whose favour such last mentioned certificate or certificates shall be signed such plaintiff or plaintiffs shall and will reimburse and pay to the said person or persons respectively who have obtained his or their certificate or certificates as afore-said the full amount of all the costs charges damages and expenses which shall be incurred or sustained by such person or persons respectively by reason or on account of such actions or suits or any of them *In witness &c.*

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Debtors having
obtained cer-
tificates not to
be sued, except
for conformity.

If sued for con-
formity, their
expenses to be
repaid.

No. CCXCV.

No. CCXCV.

*Assignment by
Copartners in
Trust for
Creditors.*

*Assignment of Stock in Trade, Debts and Effects of Copartners
for the Benefit of Creditors. (General Precedent.)*

This Indenture made &c. Between A. and B. of &c. carrying on trade in copartnership under the firm of A. and B. of the first part (Trustees) and the several persons whose names and seals are hereunto set and affixed of the third part Whereas the said A. and B. have for several years past carried on the trade or business of merchants under the firm of A. and B. and have become and now stand indebted on their joint account to the several persons and in the several sums set opposite to their respective names in the first schedule hereunder written And whereas the said A. is indebted on his own separate account to the several persons parties to these presents of the third part in the several sums set opposite to their respective names in the second schedule hereunder written And whereas the said B. is indebted to the several persons parties hereto of the third part in the several sums set opposite to their respective names in the third schedule hereunder written And whereas the capital stock or property of the said A. and B. belonging to them on their joint account consists of a certain messuage warehouses and premises situate at and demised to them the said A. and B. by a certain indenture of lease bearing date the &c. for a term of years And also of divers goods merchandize vessels bonds bills and other securities debts and effects And whereas the separate property of the said A. consists of sundry household goods furniture china plate linen and also several policies of insurance And whereas the separate property of the said B. consists of &c. (here state it) And whereas the said A. and B. being unable to pay to every their joint and separate creditors the whole of their respective demands but have agreed to convey and assign all and singular the estate property debts and effects belonging to them as well on their joint as on their separate account in trust for themselves and the rest of their creditors rateably in such manner as the same joint and separate estate would be distributable under a bankruptcy And whereas the said (Creditors) have consented to accept the offer of the said A. and B. subject to the provisoes and agreements herein-after mentioned and declared Now this Indenture Witnesseth That in pursuance of the said agreement They the said A. and

B. *Do* and each of them *Doth* by these presents assign unto the said (*T.*) *All that* message or tenement warehouses and premises comprised in the said in part recited indenture of &c. and all the rents issues profits benefit and advantage to arise therefrom And all and singular the vessels merchandize stock in trade chattels debts and effects of them the said A. and B. as such copartners as aforesaid And also all and every the bills notes bonds policies of insurance and other securities And all other the property and effects of them the said A. and B. or either of them of what nature or kind soever and wheresoever situate and being and in whosoever hands custody or power the same or any of them or any part or parts thereof now are or at any time hereafter may be with their and every of their appurtenances And all the estate title interest claim and demand whatsoever of them the said A. and B. or either of them as well jointly as separately of to in or out of the same premises and any of them respectively the wearing apparel of themselves and families excepted *To have* hold receive and take the said message or tenement warehouses vessels merchandize stock in trade chattels debts &c. and all and singular other the premises hereby assigned or intended so to be unto the said (*T.*) their executors and administrators *Upon Trust* That they the said (*T.*) and the survivors or survivor of them or the executors or administrators of such survivor shall with all convenient speed sell and dispose of the said message warehouses and premises vessels merchandize stock in trade chattels and all and singular such parts of the joint and separate estate property and effects of the said A. and B. as are saleable for such price or prices as can be reasonably gotten for the same And shall get in and receive the several debts or sums of money and all other the premises hereby assigned or intended so to be And do and shall stand possessed of or interested in all the monies to arise from the sale of the said message warehouses and premises hereby assigned and also of and in all and singular the monies which shall be received for or in respect of the profits thereof until the sale thereof and which shall be collected got in and arise from the said joint and separate estate of the said A. and B. upon the trusts and to and for the intents and purposes hereinafter expressed of and concerning the same that is to say *Upon Trust* in the first place to retain and reimburse themselves all costs charges and expenses of preparing and making such sales respectively and attending the recovery and getting in the said rents debts and other trust monies together

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*Assignment by
Copartners in
Trust for
Creditors.*

No. CCXCV. with commission and allowances usual among merchants (or among merchants trading to and from &c. *as the case may be*) *And also* to pay all salaries and allowances to be made to clerks agents and subordinates *And* in the next place that they shall by and out of the said trust monies pay and allow to the said A. for the term of two years to be computed from the day of next ensuing if he should so long live for the support of himself and his family a yearly sum not exceeding £ *And* in like manner shall allow to the said B. a yearly sum not exceeding £ *And* in the last place shall pay and apply so much of the said trust monies as shall arise from the sale getting in or conversion into money of the said partnership property of the said A. and B. in or towards payment of the partnership debts of the said A. and B. and do and shall pay and apply so much of the said trust monies as shall arise from the sale getting in or conversion into money of the separate property hereinbefore assigned of the said A. in or towards payment of the separate debts of the said A. *And* do and shall pay and apply so much of the said trust monies as shall arise from the sale getting in or conversion into money of the said separate property hereinbefore assigned of the said B. in or towards payment of the separate debts of the said B. *And* in case there shall remain or be any surplus of the joint and separate estate of the said A. and B. after all such payments and distributions as aforesaid *Then upon Trust* to pay and divide the same to and between the said A. and B. their executors administrators and assigns respectively in proportion and according to their respective rights and interests therein and thereto *Provided always* that distinct and separate accounts shall be kept of the joint and separate estates and effects of the said A. and B. as well real as personal *And* in case there shall be any surplus of their joint estate after all their said joint creditors shall be paid and satisfied the amount of their whole demands then that the share and shares interest and interests in such overplus of them the said A. and B. whose estates shall have been is or are to be applied as aforesaid shall be carried to the account of his or their separate estate or estates and be applied in or towards satisfaction of his or their separate debts *And* if there shall be any surplus of the separate estate or estates after all their separate creditors shall have been paid and satisfied their whole demands then that the overplus of such separate estate or estates shall be carried to the account of their joint estate and be applied in or towards satisfaction of the said

Assignment by
Copartners in
Trust for
Creditors.

To allow each
of the debtors
an annual sum
for two years.

To discharge
joint and sepa-
rate debts.

Surplus to
debtors.

Distinct ac-
counts to be
kept of the joint
and separate
estate.

joint debts (a) *And it is hereby declared and agreed by and between the parties hereto that the receipts of the said (T.)*

No. CCXCV.
*Assignment by
Copartners in
Trust for
Creditors.*

(a) Instead of assigning the joint and separate estates under one witnessing part, it may, sometimes, be most convenient to assign, first, the joint estate, and afterwards the separate estate of each debtor, by distinct witnessing parts: in that case say, "*Now this Indenture witnesseth That &c. in pursuance &c. and in consideration &c. They the said A. B. have &c. bargained &c. unto the said (T.) &c. All that &c. And all and singular the vessels &c. And all other the joint property estate and effects of them the said A. and B. To have &c. unto the said (T.) and their &c. the said messuage &c. Upon the trusts &c. That they the said (T.) &c. shall and do sell &c. the said messuage &c. and all such other parts of the joint estate &c. as are saleable &c. And shall and do by such lawful means &c. get in &c. And upon this further trust that they shall stand possessed of &c. Upon the trusts &c. In the first place to retain &c. costs &c. And in the next place to pay salaries &c. And in the next place to allow annuities to A. and B. And lastly do and shall pay and apply the said trust monies in and towards satisfaction &c. of the several debts due to the joint creditors of the said A. and B. parties hereto of the second and third parts And in case there shall remain and be any surplus of the joint estate of the said A. and B. Then in trust to stand possessed of &c. one moiety of such surplus in aid and augmentation of the separate estate of the said A. And in the other moiety of the same surplus in aid of the separate estate of the said B. And this Indenture further witnesseth (assignment of A.'s separate property) And it is hereby declared and agreed that the said (T.) and the survivors &c. shall stand possessed of and interested in the monies to arise by the sale of the said separate estate and effects of the said A. hereby assigned or intended so to be and of the monies to be received for or on account of the rents and profits thereof in the mean time until such sale or sales and also of all monies to be received and produced by and from all the premises lastly hereby assigned or mentioned or intended so to be after paying all costs charges &c. upon the trusts following that is to say In trust by and out of such monies from time to time to pay and satisfy the several sums of money requisite for continuing or keeping on foot the several policies of insurance hereinbefore expressed to be hereby assigned And in the next place to pay and satisfy the separate debts of the said A. due and owing to the several separate creditors of the said A. of the third part or so much of the same &c. And in case there shall be any surplus of the said trust monies produced by or arising from the separate estate of the said A. after such payments and distribution as afore-said Then in trust to stand possessed of and interested in such surplus monies upon such trusts as are hereinbefore declared for the benefit of the joint creditors of the said A. and B. of and concerning their joint stock capital and property And lastly in trust to pay the ultimate surplus (if any) arising or to be produced by or from the separate estate of the said A. after full payment and satisfaction of the several debts due and owing to the separate and joint creditors parties hereto of the second and third parts unto the said A. his executors and administrators And this Indenture further witnesseth (assignment of B.'s separate property) And it is hereby declared &c. (the same trusts as before) And it is hereby further declared and agreed" &c. see above.*

Assignment of
A.'s private
estate.

Assignment of
B.'s private
estate.

No. CCXCV.
*Assignment by
 Copartners in
 Trust for
 Creditors.*

Indemnity to
 trustees.

Power of at-
 torney.

Covenants from
 debtors.

and the survivors &c. shall be valid discharges to the person to whom the same shall be given And that it shall be lawful to and for the said (T.) to sell and dispose of the said joint and separate estate and effects of the said A. and B. hereby assigned or intended so to be at such times and in such manner as they shall think fit and from time to time to make or cause to be made insurances of the said trust estate hereby assigned as he or they shall think proper and expedient and to deduct the premium or premiums of such insurance and insurances *And further* that they the said (T.) and the survivors &c. shall not be answerable for any more monies goods wares or effects than what he or they shall actually receive by virtue of these presents nor liable to make good losses that shall happen in the management sale or disposal of the said trust estate and premises hereby assigned without the wilful neglect or default of them the said (T.) and the survivors &c. *And* the better to enable the said (T.) and the survivors &c. to recover and receive all and singular the aforesaid joint and separate estate and effects now due or belonging to the said A. and B. or either of them They the said A. and B. with the consent of the said several creditors parties hereto of the third part *Do* and each of them *Doth* by these presents make constitute and appoint the said (T.) and the &c. their true and lawful attorney and attornies irrevocable in their or either of their names places or stead but to and for the uses and purposes aforesaid to demand sue for recover and receive of and from the said several persons in the said schedules mentioned who are indebted to the joint and separate estates of the said A. and B. or either of them on any account whatsoever All and every the goods wares and merchandize debts or sums and other the premises hereby assigned And upon receipt of the same to give acquittances releases and such other discharges as shall be necessary and on nonpayment thereof to prosecute all and every such actions remedies and means as to them shall seem meet and also to settle and adjust or make composition or agreement of or for the same or any part thereof by arbitration or otherwise howsoever And also to adjust and settle all and every other account or accounts with any person or persons in relation to the premises and generally to do perform and execute all acts matters and things necessary and fit to be done in and about the premises as fully and effectually to all intents and purposes as they the said A. and B. or either of them might have done if personally present and these presents had not been made *And* the said A. and B. for themselves severally and respectively

and for their several and respective heirs executors and administrators do hereby covenant &c. with and to the said (T.) and (C.) parties hereto of the second and third parts in manner following that is to say That for and notwithstanding any act matter or thing done committed or suffered by them the said A. and B. or either of them the said hereinbefore recited lease is a good and valid lease and that the said debts mentioned in the said schedules hereunder written or otherwise expressed to be due and owing to the said A. and B. by or from the several persons therein named are now well and truly due and owing and subsisting And that they the said A. and B. or either of them or any other person or persons for their use or by their order have or hath not at any time or times heretofore assigned incumbered received released or discharged all or any part of the hereby assigned goods wares merchandizes debts or effects And that they or either of them shall or will not without the consent of the said (T.) or the survivors &c. assign incumber receive release or discharge the same or any part thereof And that in case any debt or debts or sum or sums of money now due and owing unto them the said A. and B. or either of them is or are omitted to be mentioned in the said schedules hereunder written they the said A. and B. or either of them shall and will hereafter on request made to him or them or either of them transfer and assign all and every such debt or debts sum or sums of money unto the said (T.) or the survivors &c. or the trustee or trustees for the time being And it is hereby declared and agreed (*appointment of new trustees, see last Precedent*) And this Indenture further witnesseth That they the said several (C.) parties hereto of the second and third parts Do and each of them Doth hereby release and discharge the said A. and B. and each of them their and each of their heirs &c. of and from all manner of actions and causes of action suits debts sum and sums of money claims and demands whatsoever at law or in equity which against them the said A. and B. or either of them they the said (C.) now have or ever had or are entitled unto or shall or may have claim challenge or demand against them or either of them their or either of their heirs &c. for or in respect or by reason or means of any act matter cause or thing whatsoever In witness &c.

No. CCXCV.
*Assignment by
Copartners in
Trust for
Creditors.*

Lease valid.

Debts subsist-
ing.

To assign debts
omitted in
schedules.

Release from
creditors.

Schedules.

- I. Joint and separate debts of A. and B.
- II. Separate debts of A.
- III. Separate debts of B.

No. CCXCVI.

Conveyance, &c.
(Short Form.)

No. CCXCVI.

*Conveyance of real, and Assignment of personal, Property in
Trust for the Benefit of Creditors. (Short Form.)*

Obs. As to the validity of such a deed, see Pref. sect. 9; and as to the stamp, see sect. 11.

This Indenture made &c. Between (Debtor) of &c. of the one part and (Trustees) of &c. of the other part Whereas (recite title to certain real estates) And whereas (recite title to certain personal property) And whereas the said (D.) stands indebted unto the said (T.) and also divers other persons in various sums of money amounting in the whole to £ or thereabouts which he is unable to pay And whereas the said (D.) hath proposed to convey and assign over unto the said (T.) all his real and personal estate and effects whatsoever in manner and for the purposes hereinafter mentioned Now this Indenture witnesseth That in pursuance of the said agreement He the said (D.) Doth grant and convey unto the said (T.) and their heirs and assigns All the messuage or tenement &c. and all that piece or parcel of land &c. (parcels) And all houses &c. And all the estate &c. To Have and to Hold the said messuage &c. unto the said (T.) and their heirs to the use of the said (T.) and their heirs upon the trusts and for the intents and purposes hereinafter declared And this Indenture further witnesseth That He the said (D.) Doth assign unto the said (T.) their executors &c. all and singular the farming stock (a) implements of husbandry household goods chattels furniture debts and effects whatsoever and of what nature or kind soever as are now due and belonging to the said (D.) and all the estate right and interest of him the said (D.) of in and to the said last mentioned premises To Have Hold receive and take the said farming stock &c. and all and singular other the premises hereby assigned unto the said (T.) their executors and administrators upon the trusts and for the purposes hereinafter mentioned And it is hereby declared that the conveyance hereinbefore made of the said freehold messuage &c. and the assignment hereinbefore made to the said (T.) their executors &c. of the farming stock &c. is made to them the said (T.) their heirs execu-

Conveyance.

Assignment.

(a) It has been decided that in an assignment made for the benefit of creditors by a trader and farmer, the words "effects, stock, books and book debts" will convey cattle on the farm, *Lewis v. Rogers*, 1 C. M. & R. 48.

tors administrators and assigns upon trust that they the said (*T.*) or the survivor of them and the executors or administrators of such survivor shall as soon as conveniently may be after the date and execution of these presents of his or their own authority and without the concurrence of the said (*D.*) his heirs executors or administrators or any other power or authority of him the said (*D.*) than is herein contained make sale and absolutely dispose of the said messuage piece and parcel of land farming stock implements &c. and other effects hereinbefore mentioned and described and intended to be hereby granted and assigned with their and every of their appurtenances either together or in lots and either by public auction or private contract for the best price or prices that at the time or respective times of such sale or sales can be reasonably had or obtained for the same to such person or persons as shall be willing to become the purchaser or purchasers thereof And shall stand possessed of and be interested in the monies to arise by such sale or sales upon the trusts and for the intents and purposes hereinafter mentioned expressed and declared of and concerning the same And that the receipt and receipts of the said (*T.*) or the survivor or the executors or administrators of such survivor shall be good and sufficient discharges to any purchaser or purchasers respectively of the said hereditaments and premises for his her or their purchase-money or so much thereof respectively as in such receipt or receipts shall be expressed to be received and that no person obtaining such receipt or receipts shall be bound to see to the application or answerable for the misapplication or nonapplication of the money acknowledged in such receipt And for the better enabling the said (*T.*) and the survivor of them to recover and get in and receive all and every the estate and effects now due and owing to the said (*D.*) he the said (*D.*) doth constitute (see *last Precedent.*) And it is hereby further expressly declared and agreed by and between the parties to these presents that the said (*T.*) and the survivor &c. shall stand possessed of and interested in the said monies to arise by the sale or sales of the said hereditaments and premises and of the farming stock &c. hereinbefore conveyed and assigned or intended so to be and the rents issues and profits of the said messuage and premises in the mean time until such sale or sales shall be made and all other monies which the said (*T.*) or the survivor &c. shall receive by virtue of these presents upon the trusts and for the intents and purposes hereinafter limited expressed and declared that is to say *Upon Trust* in the

No. CCXCVI.
Conveyance, &c.
(Short Form.)

Receipt valid
discharges.

Power of attorney.

No. CCXCVI. first place to pay unto E. F. of &c. G. H. of &c. I. K. of &c. *Conveyance, &c. (Short Form.)* such sum and sums of money as shall be due and owing to each of them under and by virtue of certain mortgages upon the herebefore mentioned freehold premises executed by the said (D.) to each of them the said E. F. G. H. and I. K. respectively and from and after full payment thereof then *upon trust* out of the same monies and premises after deducting and retaining all costs charges and expenses which he or they or any of them shall sustain expend or be put unto in and about the execution of the said trusts to pay and apply the residue to and amongst themselves and all other the creditors of the said (D.) who shall make due proof of their debts if required and shall on or before the day appointed for that purpose (of which notice shall be given by advertisement in the London Gazette and in newspapers) agree to accept the same in full of their respective debts and give a receipt in full for the same accordingly And in case there shall chance to be any ultimate residue or surplus of such money *Then in trust* to pay the same to the said (D.) his executors administrators or assigns or such person or persons as he or they shall appoint And the said (D.) for himself &c. (*covenants for title, see Conveyance in Trust for Creditors*) *In witness &c.*



No. CCXCVII.

No. CCXCVII.

*Assignment by
one not a Trader
to pay Debts.*

*Assignment of the Effects of a Debtor (not being a Trader) in
Trust to pay his Debts.*

Obs. As to the validity of a deed of this kind, see Pref. sect. 9; and as to the stamp, see sect. 11.

This Indenture made &c. Between (Debtor) of &c. esq. of the one part and (Trustees) of &c. of the other part *Whereas (recite debts as mentioned in first schedule, see former precedents)* *Now this Indenture witnesseth* That in order to secure the payment of the said several and respective debts so due and owing from him the said (D.) to his several creditors He the said (D.) *Doth* by these presents assign and set over unto the said (T.) all and every the several and respective sum and sums of money arrears of rent and money due and owing to the said (D.) on account of salary or on any other account whatsoever particularly mentioned in the second schedule hereunto annexed and all profits benefit advantage costs and charges arising and to be recovered

for or on account of the said several debts sum and sums of money arrears of rent salary and other things and all the estate &c. of him the said (D.) in to and out of the same and every part and parcel thereof *To Have Hold* take and receive the said debts sum or sums of money arrears of rent and salary and other things hereby assigned or intended so to be and every part thereof unto the said (T.) their executors administrators and assigns *In Trust* That they the said (T.) or the survivors or survivor of them or the executors or administrators of such survivor do immediately after the execution of these presents get in and receive of and from the several tenants and other person and persons whose names and sums are mentioned in the second schedule hereunto annexed all and every the arrears of rent and salary and other sum and sums of money now due and owing to the said (D.) *And upon this further trust* and confidence that they the said (T.) and the survivors &c. do pay the same unto the several persons and on the several accounts and in manner and form hereinafter mentioned of and concerning the same that is to say That they do pay the sum of £ to the said (D.) himself for one quarter of the annual payment of £ which he hath set apart and reserved for himself for his subsistence until the day of next ensuing out of the said arrears and also out of the growing profits of his real and personal estate hereby assigned *And* also that they do pay to the said (D.) the further sum of £ other part thereof for another quarter of the said sum of £ so reserved as aforesaid from the day of to the day of next *And* also the further sum of £ for another quarter of &c. from the day of to the day of next *And* also the further sum of £ for another quarter of the sum of £ from the day of which shall be in the year if he shall so desire *And* from and immediately after payment of the said four several sums of £ to the said (D.) *Then upon this further trust* and confidence that they the said (T.) and the survivors &c. do pay the remainder of such sums of money as shall be gotten in and received by them or their order out of or on account of the premises hereby assigned or any part or parcel thereof unto and amongst the several creditors of the said (D.) whose names are mentioned and set forth in the second schedule hereunto annexed in such manner and form as the said (D.) by and with the

No. CCXCVII.
Assignment by
one not a Trader
to pay Debts.

Annual allowance to the debtor.

To pay creditors.

No. CCXCVII. approbation of the said (T.) testified by their or one of them signing such orders of the said (D.) shall from time to time direct them under his hand so to do until all the said creditors are fully paid and satisfied their respective debts and such charges as the said (T.) or any of them their or any of their heirs executors or administrators or any other person or persons that shall be employed under them shall have necessarily been at or put unto in and about the execution of the present trust are also fully paid and discharged *And then in trust* and to and for the use and benefit of the said (D.) his executors administrators and assigns and to and for no other use intent and purpose whatsoever *And* for the better enabling the said (T.) or such other person or persons as shall be employed by them to recover and receive the said debts and sum and sums of money arrears of rent and salary and all other the premises hereby assigned he the said (D.) Doth hereby nominate constitute and appoint the said (T.) and the survivors &c. his true and lawful attornies irrevocable for him and in his name but to and for the proper use and behoof of the said (T.) and the survivors &c. in trust as aforesaid to ask demand sue for recover and receive the said hereby assigned premises and every part and parcel thereof and on receipt thereof or of any part or parcel thereof to give any receipts acquittances releases or other discharges as the case shall require and also to compound arbitrate agree settle commence or defend actions or suits conclude determine and generally to make do and execute all and every other act matter or thing whatsoever in and about the premises which shall be requisite and needful to be made or done as fully and amply in every respect as the said (D.) might or could do if he were personally present and also to authorize constitute and appoint one or more attorney or attornies under them *And* the said (D.) doth hereby ratify and confirm all and whatsoever the said (T.) shall lawfully do or cause to be done in and about the premises by virtue of these presents *And* the said (D.) for himself his executors and administrators doth hereby covenant with and to the said (T.) their executors administrators and assigns in manner following that is to say that he the said (D.) his executors administrators or assigns or any of them shall not nor will at any time or times hereafter take receive release or discharge the said debts or other the premises hereby assigned or any of them or any part or parcel thereof without the consent in writing of the said (T.) first had and obtained for that purpose and that he the said (D.)

*Assignment by
one not a Trader
to pay Debts.*

Power of at-
torney.

Covenants from
debtor.

shall and will at all times at the request of the said (*T.*) but at the costs and charges in the law of the said (*D.*) his executors or administrators make do execute and suffer or cause to be made done executed and suffered all and every such further and other acts deeds assignments and assurances in the law whatsoever for the better and more satisfactorily assuring the said hereby assigned debts and other the premises unto the said (*T.*) and the survivors and for the enabling them to recover and receive the same in trust as aforesaid *And further* that the said (*D.*) shall and will from time to time and at all times hereafter well and sufficiently save defend keep harmless and indemnified them the said (*T.*) and the survivors &c. their and each of their goods and chattels lands and tenements of from and against all costs losses and damages which they or either of them shall or may suffer sustain or be put unto for and by reason or means of their or either of their acting in the said trusts or intermeddling in any of the matters and things in or about the execution thereof according to the directions aforesaid *And* it is hereby declared and agreed that the receipts of the said (*T.*) or the survivors &c. for any money payable to them or him under or by virtue of these presents shall be effectual receipts and discharges to the person or persons taking the same who shall not be compelled to see to the application of the money mentioned in such receipts to be received or be answerable for the misapplication or nonapplication thereof *And* it is hereby agreed and declared that the said (*T.*) or the survivors &c. shall not be answerable the one for the other of them or for any loss which may happen in the execution of these presents except the same shall happen through their wilful default respectively nor for any money but what shall actually come to the hands of them the said (*T.*) respectively and be actually received by them respectively their joining in orders and receipts for the same notwithstanding *And* that it shall and may be lawful to and for the said (*T.*) and the survivors &c. to deduct all and every such costs and charges as they shall have been at or put unto or have incurred in or about the execution of this present trust out of the monies which shall have been gotten in by force hereof before they shall be compelled to reassign the said bargained and assigned premises or such part thereof as shall not have been disposed of by force hereof *In witness &c.*

No. CCXCVII.

*Assignment by
one not a Trader
to pay Debts.*

Indemnity to
trustees.

Trustees' receipt
clause.

Not to be an-
swerable for
each other.

To reimburse
themselves.

No.
CCXCVIII.

No. CCXCVIII.

Assignment to
Two Creditors.

*Assignment of Personal Estate to two Creditors upon Trust to
sell for their Benefit.*

Recital of debts.

Testatum.

Habendum.

Upon trust.

To make sale.

To pay ex-
penses.

This Indenture made &c. Between (Debtor) of &c. of the one part A. B. of &c. and C. D. of &c. two creditors of the said (D.) of the other part Whereas the said (D.) is justly indebted to the said A. B. in the sum of £ and unto the said C. D. in the principal sum of £ together with an arrear of interest upon each of the several sums And whereas for the purpose of repaying to the utmost of his ability the said several sums of £ and £ together with all arrears of interest respectively the said (D.) hath agreed to make an assignment of all his estate and effects in manner hereinafter expressed Now &c. that for the purpose of raising money to pay off and discharge the said several principal sums of £ and £ &c. so due and owing from the said (D.) to the said A. B. and C. D. together with all arrears of interest now due and owing from the same respectively He the said (D.) Doth by these presents assign transfer and set over unto the said A. B. and C. D. All and singular his the said (D.'s) household and other goods furniture cattle farming stock chattels debts and personal estate and effects of every description now standing or being in or about the dwelling-house and lands situate at and now or late in the occupation of the said (D.) And all the estate &c. both at law and in equity of him the said (D.) therein or thereto To Have receive and take the said goods farming stock chattels and personal estate and effects and all and singular other the premises hereby assigned or intended so to be from henceforth unto the said A. B. and C. D. their executors administrators and assigns absolutely Upon Trust that they the said A. B. and C. D. shall forthwith without any further interposition or assent of the said (D.) by public auction or private contract make sale and dispose of all and singular the goods chattels and premises hereinbefore mentioned and intended to be hereby assigned in such manner as the said A. B. and C. D. think proper and for the best price or prices that can be reasonably obtained for the same And upon this further Trust by and out of the monies to arise by the said sale to reimburse themselves and all persons employed by them all the expenses as well of pre-

paring and executing these presents as all other consequent and incidental expenses relating to the trust hereinbefore mentioned *And in the next place* to pay off and discharge first the said principal sum of £ and all interest thereof so due and owing to the said A. B. And then the said principal sum of £ and all interest thereof respectively due and owing to the said C. D. as aforesaid *And lastly upon Trust* to pay the residue or surplus (if any) of the monies to arise by the said sale unto the said (D.) his executors administrators or assigns or to whom he or they may direct or appoint And for the better enabling the said A. B. and C. D. to recover and receive the said goods &c. he the said (D.) Hath made &c. (*Power of Attorney*, see *ante*, No. CCXCVII.) *In witness &c.*

No.
CCXCVIII.
*Assignment to
Two Creditors.*

To discharge
debts.

To pay surplus.

CONDITIONS.

1. *Definition of a Condition.*
2. *Conditions precedent.*
Conditions subsequent.

3. *Conditions by Deed.*
4. *Operative Words.*

SECT. 1. A condition is a quality annexed to an estate, right or interest, by which the same is created, enlarged or defeated upon the happening of an uncertain event, Shep. Touchst. 117. Definition.

2. Conditions are either precedent or subsequent. Where the condition must be performed before the estate can commence, it is a condition precedent; as if an estate be limited to A. upon condition that he marry B., the marriage is a condition precedent, and until that happens, no estate vests in A.; but where the effect of a condition is to defeat an estate already commenced, it is a condition subsequent; as where a lease is made on condition that the lessee shall pay to the lessor on such a day a certain sum,—here the condition is subsequent, and following the estate, and the performance thereof continues and preserves the same. Conditions precedent.

Conditions subsequent.

3. An express condition cannot be annexed to an estate but by deed. For the most part, conditions are either inserted in or indorsed upon the instrument creating the estate or interest. But where the terms are inserted in a separate instrument, it is called a defeasance, see DEFEASANCES. Conditions by deed.

4. The most apt words wherewith to make a condition in a deed are, “provided always,” “nevertheless,” “and these presents are upon Operative words.

Conditions. this express condition, &c. that if, &c.;" but other words will have the same effect, as "proviso," "it is provided and agreed," &c., Sheph. Touch. 117. As to the form of a condition in bonds, see BONDS; and as to the distinction between a condition and a covenant, see COVENANTS.

Conditions in Deeds—see INDEX TO PRECEDENTS.

CONDITIONS OF SALE.

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| <ol style="list-style-type: none"> 1. <i>Particulars and Conditions of Sale the Basis of the Contract.</i> 2. <i>Evidences of the Contract. Sale of Real Property. Sale of Goods.</i> 3. <i>Accuracy of the Conditions.</i> 4. <i>Construction of the Conditions. Meaning of the Word "Rent." Compensation Clause. No Protection against Fraud. In case of unintentional Errors. Compensation in Equity.</i> 5. <i>Waiver of Conditions, &c.</i> 6. <i>What Stipulations ought to be inserted in the Condition.</i> 7. <i>Condition as to Biddings. Biddings for Seller.</i> | <ol style="list-style-type: none"> 8. <i>Conditions as to Title. As to Title Deeds. As to production of Lessor's Title.</i> 9. <i>As to Time of making out Title and completing Contract. Time of the Essence of the Contract. Months in the Computation to be Lunar or Calendar. Rule in Equity as to Time.</i> 10. <i>As to Title under an Exchange.</i> 11. <i>Condition as to Conveyances.</i> 12. <i>Condition as to Timber.</i> 13. <i>Condition as to Fixtures.</i> 14. <i>Condition as to Forfeiture of Deposit.</i> |
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Particulars and conditions of sale the basis of the contract.

SECT. 1. Particulars of sale, together with the conditions of sale, form the basis of the contract for a sale by auction; the former describing the property that is to be sold, and the latter the terms on which it is to be sold. The terms of a contract for a sale by auction are in many respects the same as when the sale is by private contract, see *ante*, AGREEMENTS (*Sale*): but there are some additional matters to be considered that are peculiar to that mode of sale.

Evidences of the contract. Sale of real property.

2. On sales of real property the conditions are usually made part of the contract by an agreement in writing duly signed by the purchaser or his agent; but in order to make the conditions an evidence of the contract within the Statute of Frauds, it is necessary that there should be a reference to them: an entry therefore by an auctioneer,

not referring to the conditions or particulars of sale, will not be sufficient, *Ramsbottom v. Tunbridge*, 2 M. & S. 434.

Conditions of Sale.

On the sale of goods, the conditions of sale annexed to the catalogue will evidence the terms of the contract; but they must be annexed or plainly referred to, or they will not be a sufficient memorandum to satisfy the 17th section of the Statute of Frauds, *Kenworthy v. Schofield*, 2 B. & C. 945: and the bare reading the conditions before the sale will not supply the defect, *ib.*; but the pasting up the conditions of sale on the auctioneer's box, as is usually done, has been held to be a sufficient notice to the buyer, *Mesnard v. Aldridge*, 3 Esp. 271.

Sale of goods.

3. Accuracy is as necessary in framing the conditions as in drawing up the particulars of sale; for when they are reduced into writing, they cannot be varied or explained by any verbal declaration made by the auctioneer at the time of the sale; not even where a party has agreed to be bound by the conditions and such declarations made at the sale, *Higginson v. Clowes*, 15 Ves. 505; and this rule prevails in equity as at law, *Jenkinson v. Pepys*, cited 6 Ves. 330; *Buchmaster v. Harrop*, 13 Ves. 471; as well in favour of the seller as the buyer, *Powell v. Edmunds*, 12 East, 6; and to a sub-sale as to an original sale, as where A. bought at a sale, after a verbal explanation given at the time, and then resold to B., who heard the explanation, this was held to be no more binding on B. than A., and therefore A. could not enforce the contract against B., *Shelton v. Livius*, 2 Cr. & J. 411; *S. C.* 2 Tyr. 420; but it seems that if a purchaser had notice of a mistake before the sale, such notice might be given in evidence against him, *Gunnis v. Erhart*, *ub. sup.*; *Ogilvie v. Foljambe*, 3 Mer. 53; so it may be proved that the purchaser perused the original lease before the sale, *Bradshaw v. Bennett*, 5 C. & P. 48; and the particulars and conditions may be altered before the sale, *Fife v. Clayton*, 13 Ves. 546.

Accuracy of the conditions.

4. It is said that the judges, in construing conditions of sale, will endeavour to collect the meaning of the parties without incumbering themselves with the technical meaning of words; as where the City of London let an estate by auction, and by one of the conditions it was stipulated that the purchaser should pay a certain rent before the lease was granted, this word rent, though properly applying only where the relation of landlord and tenant had commenced, was held to be a sum of money which should be paid, *City of London v. Dias*, Woodfall's L. & T. by Harrison and Wollaston, 301, 4th ed.

Construction of the conditions.

Meaning of the word "rent."

The most important stipulation in conditions of sale is that by which vendors endeavour to protect themselves against any misdescription, declaring that it shall not annul the sale, but that compensation shall be given,—a clause which is, however, no protection against fraudulent errors, *Norfolk (Duke) v. Worthy*, 1 Campb. 337;

Compensation clause.

No protection against fraud.

*Conditions of
Sale.*

In case of unin-
tentional errors.

and so on a sale of goods, where a ship was sold "with all faults," the vendor was held bound to disclose a latent defect, known to himself, which it was impossible for the purchaser to discover, *Mellish v. Motteux*, 1 Peake, 115; recognized in *Schneider v. Heath*, 3 Campb. 506; but it has since been decided that if the vendor used no means to conceal the defect, he might avail himself of the stipulation, *Baglehole v. Walters*, 3 Campb. 154. Where the error is unintentional, there appears to be "no definite rule to be drawn from the decided cases which should determine what misstatement or misdescription in the particulars should justify a rescinding the contract, and what should be the ground of compensation only," per Tindal, C. J., *Flight v. Booth*, 1 Bing. N. C. 370; *S. C.* 1 Scott, 190. In *Wright v. Wilson*, 1 Mood. & Rob. 207, it was held that, in the absence of fraud, however gross the negligence of the vendors, the purchaser must be bound by having bought an estate without looking at it; and in *Mills v. Oddy*, 6 C. & P. 728, where the description materially affected the value, it was held that, unless the jury thought the misdescription was wilful, a purchaser was not at liberty to rescind the contract. The better opinion, however, appears to be, "that where there is a pure mistake not prejudicing the purchaser, it is cured by the condition," per Best, C. J., *Leach v. Mullett*, 3 C. & P. 115. But where the misdescription is so material as not to be a subject of compensation, the purchaser shall be at liberty to rescind the contract altogether, as where the description was of other property than that intended to be sold, *Robinson v. Musgrove*, 2 Mood. & Rob. 92: so where, on the sale of a lease, part of the property described, which was an essential part, was not included in the lease, but was held from year to year, *Dobell v. Hutchinson*, 3 Ad. & Ell. 355: so where a lease, described as containing a restriction against carrying on any offensive trades, contained also a restriction against carrying on some trades not commonly included under the term "offensive trades," *Flight v. Booth*, *ub. sup.*: so where, from the nature of the case, there can be no estimate made of the diminution of the value, *Sherwood v. Robins*, 1 Mood. & Malk. 194, *S. C.* 3 C. & P. 339; and in one case, where on the sale of a manor by trustees the fines were described as arbitrary, which were so on alienation only, this was held not to be such a description as entitled the purchaser to any compensation, *White v. Cutton*, 6 Jur. 471, H. L.

Compensation
in equity.

A court of equity will enforce a sale with a compensation for a slight unintentional error, although there be no such condition; and will not assist the seller where there is such a condition, if the misdescription is of importance; therefore the bare omission to enumerate the taxes which the tenant had to pay was held not to entitle the purchaser to compensation, *Townsend (Lord) v. Granger*, cited 2 Sim. 436; on the other hand, where a house was described as a "brick-

built dwelling-house," which proved to be built partly of brick and partly of timber, and some parts of the exterior were only lath and plaster,—the court held this not to be a subject for compensation, *Powell v. Double*, MS. cited 1 Sugd. V. & P. 52, 10th ed. And in an earlier case, where a lease at rack-rent was described as a lease at a ground-rent, the court refused to decree a specific performance, holding the doctrine of compensation not to be applicable to cases of that description, *Stewart v. Alliston*, 1 Mer. 26. And it seems to be now settled that a court of equity will construe conditions of sale strictly in favour of a purchaser; and if a vendor wishes to preclude him from evidence which, under ordinary circumstances, he would be entitled to as a matter of common right, he must express himself in terms most clear and unambiguous, *Symons v. James*, 6 Jur. 452, V. C. K. B. As to the decisions respecting title and timber, see the section following.

Conditions of Sale.

5. Where there is an agreement for the sale of real property, with a stipulation that if the residue of the purchase-money is not paid by a certain day, the agreement should be void, and the vendors shall have power to resell,—held, that the money not being paid, and the purchaser continuing in possession and giving a warrant of attorney to confess judgment, was a waiver of the stipulation, *Ex parte Gardner in re Eastern Counties Railway Company*, 4 Y. & C. 503. So a parol waiver of a written agreement relating to an interest in land is void, as being in contravention of the Statute of Frauds, *Stowell v. Robinson*, 5 Scott, 296; so a purchaser, after long possession, held to have waived his right to an investigation of the title, *Hall v. Laver*, 3 Y. & C. 191.

Waiver of conditions, &c.

6. Much discretion is called for in the framing conditions of sale according to the nature of the property to be sold, so that they should contain all necessary stipulations as to biddings, rescinding the contract, title, taking timber at a valuation, auction duty, fixtures, and deposit—all of which have been more or less the subject of judicial decision.

What stipulations ought to be inserted in the conditions.

7. It is a usual stipulation that "No bidding once made shall be retracted," it having been decided that the bidder at an auction might countermand his bidding at any time before the lot was actually knocked down, *Payne v. Cave*, 3 T. R. 148.

Condition as to biddings not to be retracted.

As all puffing at auctions is illegal, and the right of any bidding being made on behalf of the seller has been much questioned, unless notice of it be previously given, the only prudent course, where the seller finds it necessary to protect himself in that way, is to make it a condition of the sale that the purchaser shall be at liberty to bid once.

Biddings for seller.

8. In the absence of stipulation, the vendor is bound to make a good title to the property sold; but particular stipulations are notwithstanding necessary. First, as to the title deeds. Where the seller

Conditions as to title.
Title deeds.

*Conditions of
Sale.*

wishes to protect himself against the production of deeds not in his possession, he must do so in explicit terms; therefore where the condition was, "that he should not be bound to produce any original deed or other documents than those in his possession, and set forth in the abstract," this was held not to restrict his liability to produce them for the purpose of making out the title, *Southby v. Hutt*, 2 My. & Cr. 207: so as to the expenses of searches, attested copies, and other matters connected with the making out the title, special provision ought to be made where it is not intended that they should fall on the vendor, *Dare v. Tucker*, 6 Ves. 460; recognized in *Boughton v. Jewel*, 15 Ves. 176.

Production of
lessor's title.

Secondly, in the case of leaseholds, the vendor will be bound to produce the title of his lessor, unless it be expressly stipulated to the contrary in the conditions; and an auctioneer omitting to make it a part of his conditions cannot recover his commission, *Denew v. Daverell*, 3 Campb. 451; but this stipulation, as it seems, will not prevent the purchaser from looking into the lease, if he can get access to it, and proving it to be defective, so as to vacate the contract, *Shepherd v. Keatley*, 1 Cr. M. & R. 117; *S. C.* 4 Tyr. 571, overruling *Spratt v. Jeffrey*, 10 B. & C. 249; and see *Souter v. Drake*, 5 B. & Ad. 992.

Time of making
out title and
completing con-
tract.

Time of the es-
sence of the
contract.

9. Thirdly, time of making out the title; at law time is deemed of essence of the contract; therefore, on the sale of real property, the vendor must be prepared to make out a good title on the day when a purchase is to be completed, *Cornish v. Rowley*, cited Selw. N. P. 10th ed.; but in an action by a purchaser against a vendor for not making out a good title, where it was shown that no time was fixed for that purpose, held that it should have been alleged in the declaration that a reasonable time had been allowed to the vendor, *Sansom v. Rhodes*, 6 Bing. N. C. 261. On the sale of goods, if the buyer neglect to remove the goods within a reasonable time, the seller may either charge him with warehouse rent or bring an action for the special damage, *Greaves v. Ashlin*, 3 Campb. 426; see also *Mertens v. Adcock*, 4 Esp. 251; so where the time is fixed in the conditions for the removal of the goods by the buyer, this stipulation is held to be made for the buyer, and therefore the seller must always be ready to deliver the goods on demand, *Hagedon or Haydorne v. Laing*, 6 Taunt. 162; *S. C.* 1 Marsh. 514. Where, as is usual on the sale of real property, the time for delivering the abstract of title, for the return of the abstract, for delivering draft of conveyance and completing the purchase, is limited in the conditions to any certain number of months, this word "month" may mean lunar or calendar, according to the intention of the contracting parties, *Lang v. Gale*, 1 M. & S. 111; and the delivery of the draft of conveyance to the purchaser is a condition precedent, *ib.*

Months in the
computation to
be lunar or
calendar.

Though time may in equity be made of the essence of the contract, yet the strict performance of it may be waived under particular circumstances, *Hudson v. Bartram*, 3 Madd. 495; see also *Gregson v. Riddle*, cited 7 Ves. 268; *Seton v. Slade*, 7 Ves. 265; therefore, where it was stipulated in the conditions that all objections to a title were to be taken within twenty-one days from the delivery of the abstract, or be deemed waived, and time was in that respect to be considered of the essence of the contract, held, that the twenty-one days did not begin to run until a perfect abstract had been delivered, *Glynn v. Bell*, 2 Beav. 17; but where time is not expressly made of the essence of the contract, and there is unnecessary delay by one of the parties, the other has a right, by notice, to limit the time for completing the contract; and upon default, to abandon the same, *Taylor v. Brown*, 2 Beav. 180. Whether a plaintiff in a bill for a specific performance is entitled to a decree, if, at the hearing, he can show a good title, although he had not such title at the time of the contract, does not appear to be settled, *Sailisbury v. Hatcher*, 6 Jur. 1051.

Conditions of Sale.
Rule in equity as to time.

10. Conditions of sale describing a title to premises as arising under an exchange, by virtue of an award of commissioners under an Inclosure Act, are satisfied by showing a title by award in respect of other lands and of common rights, without showing the further particulars of the exchange; and if the vendor contracts to commence his title with the award, the purchaser has no right to inquire into the title of the lands given by the vendor in exchange for the lands contracted to be sold, *Cattell v. Corall*, 4 Y. & C. 228.

Title under an exchange.

11. The expense of conveyances will fall on the purchaser, unless there is an express stipulation to the contrary.

Condition as to conveyances.

12. Where timber and other trees are to be taken by the purchaser at a valuation, the conditions should particularly specify what trees shall be paid for as timber, the custom of the country making some trees timber which in their nature are not so, *Chandos (Duke) v. Talbot*, 2 P. Wms. 601; so where an estate was sold in several lots, and as to two of the lots the conditions stated that the timber was to be taken at a valuation, but the same condition was not annexed to the other lots, although there was a general condition "that all timber and timberlike trees, down to 1s. per stick inclusive, should be taken at a fair valuation;" yet the purchaser of the lots to which the condition was not annexed was held not bound to pay for the timber, *Higgenson v. Clowes*, 15 Ves. 516.

Condition as to timber.

13. In the absence of stipulation, fixtures will pass with the conveyance of a freehold house, *Colegrave v. Dias Santos*, and see *Hitchman v. Walton*, 4 M. & W. 409. It is usual to stipulate that the fixtures shall be taken at a valuation; and where this was omitted to be done, and the purchaser had taken possession, held that the vendor

Condition as to fixtures.

*Conditions of
Sale.*

Condition as to
forfeiture of de-
posit and re-
sale.

could not maintain trover for them, *Colegrave v. Dias Santos*, 2 B. & C. 76.

14. The usual condition, that, on default of the purchaser, the deposit shall be forfeited, and the goods resold, ought not to be omitted. By virtue of this stipulation, the vendor may resell the property, and recover the loss and charges from the purchaser, see *Mertens v. Adcock*, 4 Esp. 251, questioned in *Hagedon v. Laing*, *ub. sup.*; also *Ex parte Hunter*, 6 Ves. 94. Where the condition is, that the deposit shall be forfeited as liquidated damages, this was held to apply to the breach of any particular condition; and that, where the party wrongfully abandoned the contract altogether, the vendor might recover damages *ultra* the forfeited deposit, *Icely v. Grew*, 6 Nev. & Man. 467; and where a purchaser became bankrupt after a breach of the condition, held that the seller might prove the loss on a resale under the commission, *Ex parte Hunter*, *ub. sup.*

The preparation of conditions of sale is one of the most delicate and difficult tasks imposed on the draftsman, and can only be undertaken after a careful perusal of the abstract. The preceding observations have specified most of the ordinary conditions required on the sale of property to which a perfectly good marketable title can be made, but in very many instances it will be necessary to provide by the conditions against objections which may be taken to the title by an unwilling purchaser; and at the same time great discretion is required lest the number and stringency of the conditions should alarm and deter intending purchasers.

It must be remembered, that mortgagees and trustees selling under powers of sale are not, in the absence of express provisions to that effect, entitled to sell under any special conditions of sale.

No. CCXCIX.

*Lands
(Freehold.)*

No. CCXCIX.

*Conditions of Sale of Freehold Lands. (General Form, with
Variations.)*

I. That the highest bidder shall be declared the purchaser and if any dispute shall arise as to the last or best bidder the estate shall be immediately put up again at the former bidding.

II. No person shall advance at any one bidding less than £ or retract his or her bidding And the vendor by himself or his agent shall be at liberty to bid once for the property.

III. The purchaser shall pay immediately after the sale to the

auctioneer (a) a deposit of £ per cent. in part of the purchase money and sign an agreement for the payment of the remainder on or before the day of 18 upon having a good title (b) made to him All outgoing to be cleared to that time.

No. CCXCIX.

Lands
(Freehold.)

(a) If it be a sale under a decree in equity, make a distinct condition in this form :

"The purchaser shall pay his purchase-money into the Bank of England with the privy of the Accountant-General of the High Court of Chancery (*before the 4 & 5 Vict. c. 5, "the Court of Exchequer"*) to the credit of the cause of A. against B. on or before the day of by virtue of an order of the said court to be obtained by the purchaser (*or if there be several purchasers of different lots, 'the respective purchasers of such lots'*) at his (*or 'their'*) own expense."

If it be a sale under an extent, the condition may be in the same form.

If it be a sale by order of the Commissioners of Inland Revenue, say,

"The purchaser shall pay down immediately into the hands of the Receiver-General of Inland Revenue a deposit of £ per cent. on the amount and in part of the purchase-money and sign an agreement for payment of the remainder thereof on or before next when the purchase shall be completed," see Bateman, *ub. sup.*

(b) Instead of this general reference to the title, it may be advisable to make it a distinct condition, as follows : (see Pref. sect. 8)

"Within from the day of sale the vendor shall at his own expense deliver an abstract of title to the purchaser or his solicitor and shall produce a good title to the property sold."

Where the vendor wishes to restrict his liability as to the title, add :

"The premises will be sold subject to all defects or imperfections of title subsisting before the commencement of the title of the present vendor and not occasioned by any act done by him or any person claiming under or in trust for him (*or 'before the conveyance to A. B. under whom the vendor claims title,' or 'the title having been inquired into on the estate being purchased by the present vendor the same shall be taken as it is without any further inquiry'.*)"

Where it is a sale under a power of sale in a mortgage, say,

"The purchaser shall accept an assignment from the mortgagee alone of the term granted by indenture of appointment and demise bearing date &c. without requiring any other title than such indenture."

If it be a sale under an extent, say,

"The purchaser shall accept the title to the premises as the same is deduced and shown in the abstract which will be produced at the time of the sale with all its defects (if any) and the Crown shall not be put to any expense in barring dower or supplying defects nor required to produce any title deeds other than nor to give attested copies of any documents whatever."

Where time is intended to be of the essence of the contract, say,

"The vendors shall within twenty-one days after the sale deliver an abstract

No. CCXCIX.

Lands
(Freehold.)

IV. The purchaser shall have a proper conveyance (a) at his own expense on payment of the remainder of the purchase money and possession (b) will be given on completion of the

of title and all objections thereto which shall not be taken in writing within ten days after shall be deemed waived."

Or,

"An abstract of title shall be delivered to the purchaser within a fortnight from the date hereof to be returned by him at the end of two months from the said date and a draft of the conveyance shall be delivered within three months from the date of the sale and conditions to be redelivered within four months from the same date and the purchase shall be completed on the day of next ensuing," see *ante*, Pref. sect. 9.

If it be the sale of an advowson, add, if necessary :

"The purchaser shall not require the production of the original grant but shall be satisfied with a deduction of the title from the year . . ."

(a) If it be the sale of a mortgage, say,

"Such assignment shall be prepared by and at the expense of the purchaser."

As to the assignment of mortgages, see *post*, MORTGAGES.

If it be a sale under an extent, let there be in lieu of this a distinct condition in the following form :

"The conveyance of the premises shall be by way of bargain and sale from her Majesty's Remembrancer of the Court of Exchequer to the purchaser or as he shall appoint and at his expense and such conveyance shall be drawn by his solicitor and inrolled in the said Court pursuant to the act of 25 Geo. c. 35, intitled (*set out the title*).

"The purchaser shall have the said abstract of title delivered to him after the sale and on payment of the purchase-money shall be let into possession or receipt of the rents and profits of the premises from the quarter-day preceding such payment."

If it be a sale by order of the Commissioners of Inland Revenue, omitting the condition and also the compensation clause, Art. VII., say, in a distinct condition, in this form,

"An abstract of the vendor's title will be furnished to the purchaser at the vendor's expense and the purchaser shall be entitled to a conveyance under the 7 & 8 Geo. 4, c. 53 (see Bateman's Excise Laws) but the vendor shall not be required to amend any defect which may be discovered nor to furnish any evidence of the title." See further, Bateman's L. A. Append. I. p. 141 *et seq.*

(b) If it be the sale of an advowson, it will be proper to add, as a distinct condition,

"If any vacancy shall happen in the church by the death or resignation of the present incumbent before the completion of the purchase the right of nomination shall belong to the purchaser."

If it be the sale of a reversion, add, as a distinct condition,

"In case any loss or damage shall happen by fire or otherwise to the premises or any increase in value shall accrue thereto by the decease of the tenant for life at any time before the completion of the purchase, the same shall not in anywise vacate or affect the present sale."

purchase and the purchaser will be entitled to the rents and profits from the day of 18 but if from any cause the remainder of the purchase money shall not be paid on the day of the purchaser shall pay interest for the same (as well as for the amount at which the timber shall be valued) at the rate of £ per cent. per annum from that day to the day of payment but nevertheless this stipulation to be without prejudice to the vendor's right to insist on the performance of this last condition.

V. The purchaser to take all timber (*a*) and timber like trees and pollards down to one shilling a stick and that inclusive of also the coppice and underwood by valuation such valuation to be made by two proper persons (one to be appointed by the vendor and the other by the purchaser) or their umpire on or before the day of 18 and the amount paid on completing the purchase of the estate.

VI. If any mistake (*b*) be made in the description of the property or there be any other error in the particulars of sale the same shall not annul the sale but a compensation or equivalent shall be given or taken as the case may require according to the average of the whole purchase money (on such error or misstatement being proved) such compensation (*c*) or equivalent to be settled by two referees or their umpire—one referee to be chosen by each party within ten days after notice given of the error and the umpire to be chosen by the referees immediately after their appointment.

VII. Production of title deeds (*d*).

If it be the sale of a rent-charge for a life, say,

"In case the vendor shall happen to die before the time appointed for the completion of the contract the sale shall be void."

(*a*) As to the necessity of being accurate here, see *ante*, Pref. sect. 13.

(*b*) As to the construction of this clause, see *ante*, Pref. sect. 4.

(*c*) If it be a sale under a decree in equity, say,

"Such compensation or equivalent to be determined by the Court."

(*d*) Where the title deeds cannot be delivered up, add,

"As the title deeds relate to other estates the vendor (*or* 'the purchaser of the largest lots,' *or of any particular lots specified, as the case may be*) shall retain the same and enter into the usual covenant (to be prepared by vendor's solicitor and at his expense) for their production to the purchaser; but all attested copies of such deeds which may be required by any purchaser shall be made at his own expense." As to this point, see 1 Sugd. V. & P. 60, 10th ed.; also *ante*, Pref. sect. 8; see the *next form*.

No. CCXCIX.

Lands
(*Freehold.*)

LASTLY. Upon failure of complying with the above conditions the deposit (*a*) shall be forfeited and the vendor (*b*) shall be at full liberty (with or without notice) to resell the estate by public auction or private contract and if on such resale there should be any deficiency the purchaser shall make good such deficiency to the vendor and all expenses attending such resale the same to be recoverable as liquidated damages.

Agreement following and referring to Conditions of Sale.

It is hereby declared and agreed by and between (*Vendor*) the vendor of the estate mentioned in the above particular and (*Purchaser*) that the said (*P.*) has become the purchaser of Lot 4 called as in the same particular described at the sum of £ And that the sum of £ has been paid down by the said (*P.*) to the said (*V.*) by way of deposit and in part of the said purchase money And that the said particulars and conditions of sale shall be taken as the terms of agreement for the said sale and purchase respectively and be observed and fulfilled by the said (*V.*) and (*P.*) respectively in all things As witness their hands this day of 18 .

Witness

Vendor

Purchaser

Or,

Memorandum that the messuages lands tenements and hereditaments in the foregoing particular mentioned and referred to having been put up to sale by public auction under the terms and conditions above mentioned A. B. of &c. became the highest bidder for the premises comprised in the first lot for the sum of £ and for the premises comprised in the fourth lot for the sum of £ Now therefore the undersigned (*Attorney*) as attorney for and on behalf of the said (*V.*) duly authorized and appointed doth hereby agree to sell and the said A. B. doth

(*a*) As to the forfeiture of the deposit, &c. see *ante*, Pref. sect. 15.

(*b*) If it be a sale under an extent or a decree in equity, in lieu of this condition say,

"If the purchaser neglect or fail to comply with these conditions the Court of Exchequer (*in the case of an extent, but "the High Court of Chancery" in the case of a decree, since 4 & 5 Vict. c. 5*) shall be moved to compel him to make good his purchase of the estate or for a resale thereof, and the deficiency if any together with the expenses of resale shall be borne by the purchaser."

hereby agree to purchase the said first and fourth lots at the said sums &c. respectively under the terms and conditions aforesaid and at the same time the two several sums of £ and £ were paid by the said A. B. to the said (A.) as the deposit money for the said lots respectively *Witness* the hands of the said parties &c.

No. CCXCIX.
Lands
(Freeholds.)

Receipt at the Foot of Conditions of Sale.

Obs. To be signed by the auctioneer and vendor, or his agent.

Received of A. B. of &c. (being the purchaser of the hereditaments mentioned in the foregoing particular of sale) the sum of £ as the deposit and in part of the purchase money or sum of £ for the said premises subject to the conditions of sale before stated *Witness* my hand &c.

No. CCC.

No. CCC.
Estate (Lots.)

Conditions of Sale where an Estate is sold in Lots.

I. The highest bidder for each lot shall be the purchaser thereof but if any dispute arise as to the last or best bidder the lot in dispute shall be put up again at the former bidding (or at such sum as shall be named by the auctioneer).

II. No person shall advance less than £ at each bidding for Lot I. £ for Lot II. (and so on throughout the lots).

III. The purchaser of each lot shall pay down (deposit of £ see Art. III. *General Form*)(a).

IV. An abstract of the title to each lot shall be ready to be delivered to the purchaser thereof or his solicitor at the office of the same to be returned to them on or before the day of in case of his having any objections thereto otherwise the title shall be deemed good.

V. The conveyance of each lot and all assignments of terms relating thereto shall be prepared by and at the expense of the purchaser thereof.

(a) If it be a sale under a decree in equity, add, as a distinct condition,

“The purchaser of each lot shall forthwith at his own expense take all such proceedings as may be necessary for getting himself confirmed by the court purchaser of such lot.”

No. CCC.
Estate (Lots.)

VI. The purchaser of the largest lot (*a*) in money shall have the custody of the title deeds upon entering into the usual covenants (to be prepared by his solicitor and at his expense) for the production thereof to the purchasers of the other lots (the expense of such production to be paid for by the party requiring the same) and all attested copies which may be required of any of the title deeds shall be had and made at the expense of the person requiring the same.

VII. The respective purchasers will be entitled to a proportionate (*b*) part of the rent or possession (as the case may be) of the lots to them respectively sold from the time of their respectively paying their purchase money.



No. CCCI.
Lands
(Inclosure.)

No. CCCI.

Conditions of Sale (c) under an Inclosure Act.

I. The auctioneer shall be at liberty to put up the respective lots at such sums as he shall think proper and when the sums bidden shall amount to 20*l.* no person shall be allowed to advance less than 1*l.* at each bidding to above 50*l.* not less than 2*l.* and to above 100*l.* not less than 5*l.* at each bidding.

II. There shall be one reserved bidding for each respective lot which bidding shall be vested in the commissioner or whomso-

(*a*) Add, if necessary,

"If the largest lot remain unsold the seller shall be entitled to the deeds upon entering into such covenants and each of the remaining purchasers may have attested copies at his or her expense."

(*b*) If it be necessary, add, as a distinct condition,

"Each of the purchasers shall on the completion of his purchase at his own expense give and execute to the vendor a bond in the penalty of £ conditioned for indemnifying the vendor against the rents and covenants of the lease in respect of the premises purchased by and assigned to him such bond to be prepared by the vendor's solicitor."

It may also be proper to add the following condition under the circumstances,

"All the lots being held under one lease subject to an entire rent of £ of which rent it is intended that each purchaser shall bear the sum mentioned in the foregoing particulars the purchasers shall enter into mutual covenants for the payment of their apportioned rents and performance of the covenants."

(*c*) This form was taken from Shipman's edition of Jones's "Attorney's Pocket Book," and was not acknowledged in the former editions, because it was presumed (under a mistaken supposition) to have formed a part of the original work.

ever he shall appoint and such person shall be at liberty to bid once for each lot and no more.

III. The best or highest bidder for each lot shall &c. (See *last form*.)

IV. If there be any error or misstatement in the description or quantity of any part of the foregoing lots such error shall not annul the sale but an equivalent shall be paid by or allowed to the purchaser as the case may require according to the average of the whole purchase-money such equivalent to be settled by the commissioner.

V. The purchaser of each lot shall immediately upon being declared the best bidder pay to the commissioner named in the act one-tenth part of the purchase-money for each lot according to the directions of the said General Inclosure Act in part of the purchase-money The remainder of the purchase-money to be paid within three months next after this sale agreeably to the direction of the last mentioned act.

VI. That every allotment for which the full purchase-money shall be paid shall immediately thereupon be absolutely discharged of and from all common and other right thereon and therein and be inclosed and thenceforth held in severalty by the purchaser or purchasers thereof respectively as his her or their private and absolute property in fee simple and shall accordingly be so allotted by the said commissioner.

VII. If the purchaser of any lot shall refuse or neglect to complete the purchase according to these conditions the deposit money shall be forfeited and the sale shall be void and the commissioner shall be at liberty to put up such lot again to public sale or dispose of it by private contract and if at such second sale the same shall be sold for a less sum than at this present sale the purchaser or purchasers thereof at this present sale shall over and above forfeiting the deposit-money make good such deficiency and also pay all costs and charges attending such second sale.

VIII. That the purchaser or purchasers of any lot shall enter into articles of agreement for completing the purchase thereof The conveyances to be prepared at the expense of the respective purchasers by A. B. clerk to the commissioner.

IX. If the purchaser of any lot shall be desirous of making an exchange (a) of such lot for an allotment upon any other part

(a) As to the title of a vendor of an allotment under such an exchange, see *ante*, Pref. sect. 10.

No. CCCI.

Lands
(*Inclosure.*)

of the common and the same can be effected with the convenience of all parties interested in the allotments* of the common the commissioner will endeavour to accommodate the purchaser by making such exchange.

X. The timber and other trees upon each of the lots shall be taken at a valuation (a) to be made by which value shall be declared at the sale and paid for with the remainder of the purchase-money.

XI. Compensation clause, see *ante*, *General Form*, Art. VI.

XII. Forfeiture of deposit, see *ante*, *General Form*, Art. VIII.

*Acknowledgment and Agreement referring to the above
Conditions of Sale.*

I the undersigned (*commissioner*) the commissioner named and appointed by the Inclosure Act having pursuant to such act as also by the General Inclosure Act and in consequence of public advertisement given in such manner as by the said acts are directed this day put up to sale by the several lots and premises in the foregoing particular described being part of the waste lands directed to be inclosed and marked or numbered upon the map thereof with the figures in the foregoing particular set forth do hereby acknowledge to have received of (*purchaser*) of &c. the sum of £ by way of deposit on account of the purchase-money for lot on the said map and in the said particular mentioned And I the said (*P.*) do hereby declare that I have become the purchaser of the said lot on the said map and in the foregoing particular mentioned at or for the price or sum of £ And I do hereby also promise and undertake to pay the residue of the said purchase-money being the sum of £ to the said commissioner on the day of next and to complete my purchase agreeably to the before mentioned conditions of sale and that I will make such fences to the said lot as the said commissioner shall direct *Witness &c.*

(a) As to the effect of not including all the lots within the stipulation for valuing the timber, see *ante*, Pref. sect. 13.

No. CCCII.

Conditions of Sale of a Copyhold Estate.

No. CCCII.

Lands
(*Copyholds.*)

I. The highest bidder to be purchaser, see *ante*, *General Form*, Art. I.

II. Advance on biddings, see *ante*, *General Form*, Art. II.

III. Paying deposit and signing agreement, see *ante*, *General Form*, Art. III.

IV. Delivery of abstract, see *ante*, *General Form*, Art. IV.

V. On payment of the remainder of the purchase-money the purchaser shall have a proper surrender and the property shall be surrendered according to the custom of the manor the vendor executing the usual covenant for title on the sale of copyhold estates of inheritance which surrender the deed of covenants shall be prepared by and at the expense of the purchaser.

VI. If the purchaser shall require the abstract to be certified by the steward of the manor or to be examined with the court rolls such certificate and examination shall be obtained and made by and at the expense of the purchaser.

VII. All fines whether arbitrary or certain payable on the surrender of the vendor or the admission of the purchaser shall be paid by the purchaser.

VIII. IX. X. Condition as to timber compensation and forfeiture of deposit, see *ante*, *General Form*.

No. CCCIII.

Conditions of Sale of a Leasehold Estate.

No. CCCIII.

Lands
(*Leaseholds.*)

I. and II.—See Art. I. and II. *General Form*.

III. That the purchaser shall pay down immediately into the hands of Mr. a deposit of 20*l.* per cent. in part of the purchase-money and sign &c. but in case any delay from any cause whatever should arise to prevent the completion of the contract on or before the said day of then the purchaser is to pay interest &c. but nevertheless this stipulation to be without prejudice &c. See Art. III. *General Form*.

IV. The purchaser to have a proper assignment of the lease at his own expense on payment of the remainder of the purchase-money and possession will be given on completing the purchase

No. CCCIII.
Lands
(Leaseholds.)

but the purchaser shall not require any other title than the leases (a) and assignments thereof with all usual covenants and the vendor (b) shall not be required to produce the title of the lessor and if any deeds certificates or other documents (not in the vendor's custody) shall be required to be produced the same to be at the purchaser's expense and all attested copies to be also at the purchaser's expense.

V. There are various fixtures (an inventory whereof will be produced at the time of the sale) which the purchaser is to take at a valuation to be made thereof by two referees or their umpire and paid for at the time of completing the purchase of the estate and the purchaser may be accommodated with all or any part of the furniture at a like valuation.

VI. Taking timber, see *General Form*, Art. V.

VII. If through mistake any article is mis-stated or omitted in this particular such error or errors shall not vitiate the sale but the purchaser or vendor as the case may happen shall pay or allow a proportionate value to the average of the whole purchase-money as a compensation either way.

LASTLY. Upon failure of complying &c. see *ante*, *General Form*, Art. VIII.

Memorandum written under the Conditions.

It is hereby agreed and declared between and by the vendor of the estate mentioned in the foregoing particular of sale (or "by A. B. of &c. his agent") and (purchaser) of &c. (or "by C. B. of &c. his agent") that the said (P.) has become the purchaser of the pieces or parcels of land and premises mentioned and comprised in the foregoing particular and that the sum of £ hath been paid down by the said (P. or A.) to the said (V. or A.) by way of deposit and in part of the said purchase-money and that the said particular and conditions of sale shall be taken as the terms of agreement for the sale and purchase respectively *Witness* &c.

(a) Or, "the purchaser shall require no other evidence of title than a lease granted by indenture of demise bearing date &c."

(b) As to the necessity of this stipulation, see *ante*, Pref. sect. 8.

No. CCCIV.

No. CCCIV.

Timber.

Conditions (a) for the Sale of Timber.

I. That there shall be two bidders at the least and the highest bidder to be the purchaser at the expiration of three minutes from the preceding bidding provided the same shall be as much as a sum to be mentioned in a paper sealed up and laid upon the table for each lot so specified previous to the commencement of sale and if any dispute shall arise the same lot shall be put up again for sale.

II. See *ante*, *General Form*, Art. II.

III. That the purchaser of each lot shall immediately pay down a deposit of 10*l.* per cent. in part of the purchase-money and the remainder on the day of 18 .

IV. That the purchaser of each lot shall enter into proper articles agreeable to these conditions at the joint expense of himself and the vendor and shall also within four days from this day at his own expense enter into a bond with sufficient security to be approved by vendor at his house in &c. for payment of the remainder of the purchase-money according to the third condition above mentioned and also for the performance of these conditions and until such security is given the timber trees and other wood and every part thereof to be considered as the property of the vendor whether fallen or not.

V. That the purchaser his servants and agents shall have power to enter on the premises where the trees are growing and shall at his own expense properly axe-fall and cut down the said ash and underwood on or before the day of &c. and also shall cut down the said timber and other trees and butts and top the same on or before &c. without doing any wilful damage to the saplings or other wood in the coppices hedges fences or premises the said timber and other trees to be stocked and the roots and spuries got out of the ground in a fair and workman-like manner but such of the trees as grow on the banks of the brooks gutters or rivulets to be axe-fallen in such manner as the vendor shall direct so as to prevent the banks of the same from being broken in.

VI. That the whole of the said ash and underwood shall be

(a) This was inserted in the first edition from Shipman's edition of Jones's "Attorney's Pocket Book," but not acknowledged, for the reason stated in a former note.

No. CCCIV.
Timber.

cleared off the said coppices and premises on or before the said day of next and the whole of the timber or other trees bark cordwood and wood arising from the said timber trees shall be cleared off from the said lands and premises by the usual and proper roads to the same on or before &c. until which time the purchaser shall have the usual privileges of sinking sawpits and getting turf in such places to be appointed by the vendor or his agent for that purpose for converting the said timber and coaking the cordwood, not doing any wilful damage to the saplings or other wood growing on the said coppice and premises such sawpits so to be made as aforesaid shall be properly fenced or covered and shall immediately after the converting of such timber be filled up at the expense of the purchaser, except as hereinafter mentioned and such of the ash underwood or other trees cordwood or other wood as is are or shall be then remaining on any part of the said land and premises shall be forfeited to the said vendor as and for a compensation for such damage as shall be occasioned thereby.

VII. That the said purchaser shall have the boughs and tops of the said timber and other trees cut off and laid on the bodies thereof or under the hedges and fences by which the least damage can be done to the crops of grain within three days after such being fallen and shall not work or carry away any part of the said timber or other trees till after such crops of grain are cut or carried except the bark of such timber or other trees which the purchaser shall have carried from and off the said crops of grain without taking any horse or carriage on such crops for such purpose.

VIII. That the purchaser shall allow five stakes for every tree fallen in the hedge-rows or fences to make up the gaps in the said fences where such trees are so fallen as aforesaid and also a full compensation for all damages sustained in falling such ash underwood timber and other trees (except such as are necessary and reasonable).

LASTLY. That if the purchaser shall refuse fail or neglect to perform the several conditions hereinbefore stated the deposit-money shall be forfeited to the vendor who shall be at liberty either to enforce the present contract or to resell the timber or other trees as aforesaid by public auction or private contract and the deficiency (if any) of such second sale together with the charges attending the same shall be made good by the defaulter at this present sale.

No. CCCV.

No. CCCV.

Goods.

Conditions of Sale of Goods (a).

I. Highest bidder the purchaser, &c., see Art. I., *General Form*.

II. No person to advance less than sixpence – above ten shillings one shilling—above five pounds five shillings and so on in proportion.

III. The purchasers to give in their names and places of residence (if required) and pay down a deposit of thirty per cent. in part payment of purchase-money in default of which the lot or lots so purchased will be immediately put up again and resold.

IV. The lots to be taken away at the buyer's expense within days after and the remainder of the purchase-money to be absolutely paid on or before delivery (*b*).

V. Upon failure of complying with these conditions the deposit-money shall be forfeited and all lots uncleared within the time aforesaid shall be resold by public auction or private sale and the deficiency (if any) on such resale shall be made good by the defaulter.

On the sale of books, add, as a condition to precede the last :

“The books are presumed to be perfect unless otherwise expressed but if upon collating at the place of sale any should prove defective the purchaser will be at liberty to take or reject them but the sale of any book is not to be set aside on account of stained or short leaves.”

On the sale of horses, add as follows :

“A warranty of soundness when given at this repository will remain in force until twelve o'clock at noon on the day next after the day of sale when it will become complete and the responsibility of the seller will terminate unless in the mean time a notice to the contrary accompanied by a certificate of a veterinary surgeon be delivered at in which certificate shall be set forth the cause and nature or description of the alleged unsoundness In this case the seller to have the option of procuring the

(a) For other forms, and as to forms for letting by auction, see Bate man's L. A. Append. I., 149 *et seq*.

(b) As to the effect of this condition, see *ante*, Pref. sect. 9.

No. CCCV.
Goods.

certificate of a second veterinary surgeon (which he shall be bound to do within twenty-four hours after the delivery of the purchaser's notice and certificate of unsoundness above mentioned or the sale to be void) whose opinion if it should coincide with the first shall be definite but if the opinions differ the two veterinary surgeons shall forthwith call in a third whose certificate shall be final and binding on both parties the party in the wrong to pay all the expenses." See *Bywater v. Richardson*, 1 Ad. & Ell. 508.

On the sale of merchandize, add as follows:

"The goods to be taken with all faults and defects as they now lie to be reweighed within ten days and to be at the purchaser's risk from the time of weighing to be taken from the scale at the purchaser's expense and the warehouse to be cleared within two months or rent to be paid for any that may remain after that time.

"Payment to be made on delivery of the bills of parcels by bills &c. and in case of default the goods to be resold forthwith and the loss (if any) made good by the defaulter.

"Purchasers to pay all duties of customs.

"The signing of the catalogue by the selling broker to bind both seller and purchaser."

No. CCCVI.
Commercial
Sale.

No. CCCVI.

Conditions of a Commercial Sale.

Obs. Since the introduction of the docks, it has become the practice to dispose of warehoused goods by public sale, in the same manner as had been before adopted by the East India Company, which sales are conducted by brokers. The following conditions, which were commonly used by the East India Company at their sales, may, with slight variations, be adapted to any such commercial sales, Pulling's Treatise on the Laws, &c. of London, 464.

I. The highest bidder to be the purchaser and if any dispute arise the same to be decided by a show of hands or to be left to the decision of the selling broker.

II. The buyers of goods at this sale are to pay all duties of

customs and excise (*a*) which now are or may hereafter be imposed upon the same by any act of parliament.

No. CCCVI.
Commercial
Sale.

III. All brokers who buy at this sale are to take notice that they are within three days after the conclusion of the sales to declare in writing the names of their principals with their places of abode and all brokers who buy for persons in the country or abroad shall at the time they declare their principals produce their orders for the same together with the undertaking of a resident known agent in London to make good the contract. Should any broker neglect to declare his principal in the manner above mentioned or buy for persons under age he shall be esteemed the principal and shall himself be obliged to pay for the goods so bought by him.

IV. Every person whether broker agent or principal who is declared to be the best bidder for any lot or lots of goods at this sale shall make such deposits as are expressed in the catalogue on (*b*) or immediately after the sale of any lot if required in default of which the lot to be put up again and shall pay the remainder of the purchase-money on delivery of the warrants on or before the prompt-day (*c*) (*which is always fixed*) without discount.

V. In case any buyer makes default in payment of his deposit or in paying the remainder of the purchase-money the goods shall be as soon after as convenient resold by public auction or private contract at the option of the selling broker and the difference in price if any together with the expenses and interest of money or other damage shall be made good by the defaulter.

VI. In all cases where the goods have been exposed to view so as to afford opportunity for purchasers to exercise their own judgment no allowance whatever will be made nor will the purchasers be permitted to relinquish on any pretence any lots they may have bought.

VII. No allowance will be made upon any goods by reason of damage or otherwise that shall remain in the warehouse after the prompt-day. The buyers shall be at liberty to have the packages opened at their own charge previous to the prompt-day and if any goods be damaged (unless as described in the

(*a*) Except sugars, hides, and some others, which are sold duty paid, Pulling, *ub. sup.*

(*b*) This is usually made a few days after, Pulling, *ub. sup.*

(*c*) By the "prompt-day" is understood the day for payment on sales of goods, not payable by bills, which varies in different trades, Pulling, *ub. sup.*

No. CCCVI.
Commercial
Sale.

catalogue) or any pieces be wanting the buyers shall have and accept such allowance as two or more brokers shall deem reasonable but no allowance on any pretence whatever shall be made on any goods bought at this sale after the same have been taken away.

VIII. All goods bought at this sale shall remain at the risk of the sellers until the prompt-day unless previously paid for.

IX. The buyers are to pay lot money as customary to the selling broker on every lot whether bought at or after the sale until the prompt-day.

X. The buyers are to pay warehouse rent for every lot of goods that remains in the warehouse after the prompt-day also all delivery and packing charges according to the rates of the several dock companies in whose warehouses the same may be respectively lying.

CONFIRMATIONS.

1. Definition.

Different Kinds of Confirmation.

2. Operative Words.

3. Requisites.

1st. *A good Confirmor, &c.*

Infant, &c.

2nd. Precedent Estate.

3rd. *Estate of Confirmor.*

4. Confirmation, when necessary.

5. Effect of Confirmation.

6. Stamp Duty.

Definition.

SECT. 1. A confirmation is a conveyance of an estate, or a right *in esse*, whereby a voidable estate is made sure and valid, or a particular estate is increased and enlarged, Co. Litt. 295; or, in other words, a confirmation is the approbation or assent to an estate already created, which, as far as in the confirmor's power, makes it good and valid, Gilb. Ten. 75. Estates which are absolutely void do not admit of confirmation, but those which are voidable only; therefore a lease by tenant for life, being merely void at his death, cannot be confirmed by the remainder-man, *Doe v. Butcher*, 1 Doug. 50, recognized in *Doe v. Archer*, 1 B. & P. 531; but if a tenant for life makes a lease for twenty years generally, and he in the reversion confirms the lease, then that which would have determined at the death of the tenant for life becomes good and unavoidable, *Ann Mayowe's case*, 1 Co. 147; Poph. 50; as to leases, see further, *post*, LEASES. So a confirmation will not add to or take from an estate a descendible quality, nor make a man capable of it, who is incapable of himself, Sheph. Touchst. 312. A confirmation is either express or in deed, that is when the act done or deed made is intended for a confirmation, or it is implied

Different kinds
of confirmation

in law, when the law by construction makes a confirmation of a deed intended for another purpose; therefore if tenant for life and his lessor make a feoffment by deed, this is the feoffment of the tenant for life and the confirmation of the lessor, although there is no word of confirmation in the deed, *Plowd.* 140.

Confirmations.

2. The most apt and proper words in a confirmation are, "confirm, ratify and approve;" although "give and grant" and other general words will make a good confirmation, *Litt.* 515; *Sheph. Touch.* 311; *Gilb. Ten.* 39. And a bargain and sale which fails to operate as such for want of a consideration has been held to enure as a confirmation, *Osborn v. Churchman*, *Cro. Jac.* 127; so although regularly an estate is not created by a confirmation, yet such words may be used in a confirmation as may increase or enlarge the estate, but that is effected by the force of those words, and is foreign to the confirmation, *Butl. Co. Lit.* 295, n. 1; *Gilb. Ten.* 75; as if the lessor confirms the estate of the lessee for life, and adds this clause, "without impeachment of waste," *Beaumont's case*, 9 *Co.* 139 b; so far as the particular estate is increased, it is not the confirming or strengthening of the tenant's estate, but the giving him a greater one. Such a deed is properly a deed of release, and not a deed of confirmation, *Sheph. Touchst.* 311.

Operative words.

3. In every good confirmation there must be—1st. A good confirmor and a good confirmee, and a thing to be confirmed, as in other grants, and the deed must be under seal, &c. As a rule an infant after he is of full age may confirm any contract not absolutely void, *Chesterfield v. Jansen*, 2 *Ves.* 146, recognizing *Cole v. Gibbons*, 3 *P. Wms.* 290; but since the 9 *Geo.* 4, c. 14, s. 5, such confirmation must be in writing to be valid; so any person may confirm a contract who is not ignorant of his rights, *Cann v. Cann*, 1 *P. Wms.* 723; and if he does it with his eyes open he will be bound, if the contract is not absolutely void for fraud, *Morse v. Royal*, 12 *Ves.* 355; *Braybroke (Lord) v. Inship*, 8 *Ves.* 417; *Roche v. O'Brien*, 1 *Ball & Beat.* 355.

Requisites of a good confirmation.
Infant.

2nd. There must be a precedent estate in him to whom the confirmation is to be made, in his own or another's right; or at least, he must have the possession of the thing whereof the confirmation is to be made, that it may be as a foundation for the confirmation to work upon, *Sheph. Touchst.* 313. And this is the same whether the possession be rightful or wrongful. If a man confirm a disseisor's estate for an hour, this passes the fee without the word "heirs;" because the disseisee has the fee, and when he confirms it he cannot after destroy it, 1 *Inst.* 297; *Gilb. Ten.* 75.

Precedent estate.

3d. The estate of the confirmor must be such as to enable him to make a confirmation; therefore if tenant in tail and the issue in tail join in a grant of the next avoidance, and the tenant in tail dies, this

Estate of confirmor.

Confirmations. is not a confirmation by the issue in tail, for he had nothing at the time, 1 Roll. 482.

Confirmation, when necessary. 4. If any lease be made by any bishop, dean and the like, which is not warranted by the 32 Hen. 8, or within any other statute, it must be confirmed by the dean and chapter under their common seal; *sed secus* if it be warranted by the statute, Dy. 145; 1 Inst. 300; so if a bishop grant an ancient office belonging to his bishopric, although it be but for the life of the grantee, it must be confirmed by the dean and chapter, *Bishop of Salisbury's case*, 10 Co. 62; so if tenant for life grant a rent charge to I. S. and his heirs, in this case he in the reversion must confirm it, otherwise the grant will be good for no longer than the life of the grantor, *Ann Mayowe's case*, 1 Co. 147.

Effect of a confirmation. 5. Where a man has an estate but for life, and he in the reversion confirms the estate to him and his heirs, the confirmation as to the heirs is void, because nothing new is granted by such confirmation; but if it had been "to have and to hold the land to him and his heirs," that had amounted to a grant of the fee; for then there appears to be a further intent than merely to confirm the estate, that is, to enlarge it to him and his heirs. And my Lord Coke observes, "the *habendum* and the premises do in substance well agree together; and that the *habendum* may enlarge the premises, but not contract it," Co. Litt. 299 a; Gilb. Ten. 78. So a confirmation made of the land to a lessee is good for ever, for an estate of freehold or inheritance is entire; but there may be a confirmation of a lease for years for part of the term, as where a lease for 70 years is confirmed for 51, because a term for years is a divisible thing, *Foord's case*, 5 Co. 81.

Stamp duty. 6. A confirmation simply as such, which does not create or pass any estate, is not a conveyance, and does not require an *ad valorem* stamp by the 55 Geo. 3, c. 184, Sched. pt. i.; but being mostly by deed requires a deed stamp. Any writing, however, not under seal, which confirms contracts and promises is exempt from all stamp duties by the 9 Geo. 4, c. 14. Confirmations are sometimes made by separate deeds, but they more frequently form a part of a release or assignment.

No. CCCVII.

Heir at Law.

No. CCCVII.

Confirmation by an Heir at Law of Estates devised to a Stranger.

Stamp.

Obs. A deed stamp of 1l. 15s. and a progressive duty of 10s. for every 1080 words above the first 1080.

This Indenture made &c. Between (Confirmor) of &c. the eldest son and heir at law &c. of the one part and (Confirmeer) of &c. and devisee named in the will of &c. of the other part

Recitals.

Whereas the said (Testator) by his last will &c. gave and de-

vised or intended to give and devise the messuage &c. herein-
 after described unto the said (*confirmee*) his heirs and assigns
And whereas (recite death of testator and probate of will) And
whereas doubts have been entertained with respect to the validity
 of the said in part recited devise but the said (*confirmor*) being
 satisfied that the said testator was at the time of making and
 publishing his said will of sound and disposing mind and that
 the same was signed and published by him as his last will and
 testament is desirous of confirming the said devise or otherwise
 conveying and assuring the said lands and hereditaments unto
 and to the use of the said (*confirmee*) and his heirs according to
 the true intent and meaning of the said will *Now this Indenture*
witnesseth That for the end intent and purpose aforesaid He the
 said (*confirmor*) *Doth* grant ratify and confirm unto the said
 (*confirmee*) (in his actual possession now being under and by
 virtue of the said devise) and his heirs *All* &c. together with
 all houses &c. and premises and every of them respectively and
 the rents issues profits and proceeds henceforth to arise or be-
 come payable for or in respect of the same or of any part thereof
 and all the estate &c. both at law and in equity of him the said
 (*confirmor*) in to out of or respecting the said hereditaments
 and premises or any of them *To Have and To Hold* the said
 messuages &c. hereby granted and released or otherwise assured
 or intended so to be unto and to the use and behoof of the said
 (*confirmee*) his heirs and assigns for ever And the said (*con-*
firmor) for himself his heirs &c. doth hereby covenant &c. in
 manner following that is to say (*covenant that he hath not in-*
cumbered, see PURCHASE DEEDS) *And further* that for and
 notwithstanding any act matter deed or thing made done com-
 mitted or knowingly suffered by him the said (*confirmor*) or by
 or with his consent or privity He the said (*confirmee*) his heirs or
 assigns shall and may from time to time and at all times hereafter
 peaceably and quietly have hold use occupy possess and enjoy
 the said messuages &c. with their and every of their appurte-
 nances without any let suit trouble hindrance molestation dis-
 turbance claim or demand whatsoever of or by the said (*con-*
firmor) his heirs or assigns or any other person or persons
 whomsoever now or hereafter lawfully rightfully or equitably
 claiming or having title to claim any estate right title or interest
 of in to or out of respectively the same hereditaments and pre-
 mises or any part thereof by from through under or in trust for
 him them or any or either of them.

In witness &c.

No. CCCVII.
Heir at Law.

Testatum.

Habendum.

Covenant.

Has not in-
 cumbered.
 For quiet en-
 joyment.

No. CCCVIII.

Infant.

Confirmation of a Deed by an Infant on coming of Age, and a Release to be Indorsed.

Recital.
That confirmor
is of age.
Agreement to
confirm.

To all &c. the within named (*Confirmor*) and (*Confirnee*) send greeting *Whereas* the within named (*confirmor*) hath now attained the age of twenty-one years *And whereas* the said (*confirmor*) in pursuance of the covenant in the within written indenture (*or* “of the within recited bond”) entered into for that purpose by the within named (*Surety*) on his behalf hath duly sealed and delivered the within written indenture and hath also subscribed his name to the receipt for the consideration money hereon indorsed and at the request of the said (*confirnee*) hath agreed to execute such further ratification and confirmation of the same indenture as hereinafter is expressed and the said (*confirnee*) in consideration thereof hath agreed to release the said (*surety*) of and from the covenants (*or* “bond”) so entered into by him as aforesaid *Now &c.* That in consideration of the said agreement on the part of the said (*confirnee*) He the said (*confirmor*) *Hath* ratified and confirmed and by &c. *Doth* ratify &c. the within written indenture of &c. so executed by him the said (*confirmor*) as aforesaid and every covenant article clause and thing therein contained *And* the said (*confirnee*) in pursuance of the agreement on his part to be performed hath released and for ever discharged and by &c. *Doth* release &c. the said (*surety*) his executors &c. of and from the within mentioned covenant (*or* “bond”) so entered into by him the said (*surety*) and of and from all and every action and actions suit and suits cause and causes of action claims and demands whatsoever in respect thereof or for compelling performance thereof (*or* “enforcing the said bond”) or otherwise howsoever

Testatum.

Confirmor
ratifies the deed.

Confirnee re-
leases surety.

In witness &c.

No. CCCIX.

No. CCCIX.

*Lease and Sale
of Furniture.*

Confirmation of a Lease, and also of a Sale of Furniture sold by an Attorney not duly authorized.

Recitals

This Indenture made &c. Between (*Assignor*) of &c. of the one part and (*Assignee*) of &c. of the other part *Whereas* &c. (*recite lease*) *And whereas* (*recite assignment by the wife as attorney for her husband to assignee*) *And whereas* the considera-

tion money was paid to and received by the said M. wife of the said (*assignor*) by virtue of or under a letter of attorney dated &c. And the same last indenture of assignment was executed by the said M. in the name and as the attorney of the said (*assignor*) And whereas upon the treaty for the assignment so made by the said M. it was expressly stipulated that the said (*assignor*) should confirm the said assignment and should enter into the covenants hereinafter contained And whereas the said M. acting as the attorney of the said (*assignor*) did also contract with the said (*assignee*) for the sale to him of the furniture and effects specified in the schedule hereto annexed for the sum of £ which sum was paid by the said (*assignee*) to the said M. as the attorney of the said (*assignor*) And the said M. hath delivered unto the said (*assignee*) the said furniture and effects specified as aforesaid And whereas the said M. was not authorized by the said letter of attorney to sell the said furniture but upon the treaty for the said sale it was agreed that the said (*assignor*) should confirm the same which he is willing to do Now &c. in pursuance of &c. and in consideration of the premises He the said (*assignor*) Doth assign ratify and confirm unto the said (*assignee*) All &c. And all the estate &c. To have &c. And the said (*assignor*) for himself &c. [*covenants that the lease is good &c.* see ASSIGNMENT (LEASE)] And the said (*assignee*) for himself &c. doth hereby covenant &c. (*covenant that assignee will pay rent and perform covenants see ASSIGNMENT &c.*) And this Indenture further witnesseth That in consideration of the sum of £ so paid to the said M. as the attorney and on the behalf of the said (*assignor*) as the price or consideration for the purchase of the said furniture and effects specified in the schedule hereto annexed the receipt of which said sum of £ the said (*assignor*) doth &c. He the said (*assignor*) Doth by these presents ratify confirm and establish the said sale and delivery so made by the said M. to the said (*assignee*) of the same furniture and effects as aforesaid In witness &c.

No. CCCIX.
*Lease and Sale
of Furniture.*

Consideration
money paid to
attorney.

Agreement to
confirm the as-
signment and
sale.

Testatum.

Habendum.

Covenants for
title;

to pay rent, &c.

Further testa-
tum.

Schedule of the furniture above mentioned.

CONSENTS.

No. CCCX.

Mortgagor.

No. CCCX.

Consent by a Mortgagor, a Tenant in Common, that the Mortgagee may produce the Title Deeds.

Obs. Where the title deeds to the entirety of the property is in the possession of the mortgagor, and are delivered over by him to the mortgagee, the latter, it appears, is not at liberty to produce such deeds, even to the co-tenant of the mortgagor, without his express consent, *Lambert v. Rogers*, 2 Mer. 489.

And whereas it hath been agreed that the title deeds relating to the entirety of the said premises being in the custody of the said (*mortgagor*) shall be delivered over to the said (*mortgagee*) and that he shall be at liberty to produce the same in manner as hereinafter mentioned Now he the said (*mortgagor*) for himself his heirs executors administrators and assigns doth hereby consent and agree with and to the said (*mortgagee*) his heirs executors administrators and assigns that he and they shall and lawfully may from time to time and at all times when thereunto required by the person or persons who for the time being may be lawfully or equitably entitled to the other remaining moiety or half part (or "other part or parts" *as the case may be*) of the said premises produce and show forth or cause to be produced &c. to him her or them his her or their heirs appointees or assigns or any of them or to his &c. counsel attorney or solicitor the said title deeds or any of them relating to the same.

No. CCCXI.

Ordinary and Patron.

No. CCCXI.

Consent of the Ordinary and Patron to the Building or Repairing a Parsonage House (from Sched. 17 Geo. 3, c. 53.)

Obs. It must be written on parchment.

A. B. rector (or "vicar," *as the case may be*) of the parish ("chapelry" or "perpetual curacy") in the county of under the jurisdiction of the ordinary having produced to us the said ordinary and patron of the said church and living under the hand of I. H. a skilful and experieneed workman or surveyor a cer-

tificate of the state and condition of the buildings upon the glebe belonging to the said church (*or* "chapelry" &c.) and of the value of the timber and materials thereupon fit to be sold or employed about such buildings and also a plan made by the said I. H. of the work proposed to be done by new buildings and repairs upon the said glebe and an estimate of the expense attending the same after applying the said materials or the money to arise from the sale thereof in such buildings and repairs and also a particular account in writing signed by the said A. B. of the profits of such living and of the rents stipends taxes and other outgoings annually issuing thereout verified upon oath pursuant to the directions of an act passed in the seventeenth year of the reign of his late Majesty King George III. intituled "An Act to promote the Residence of the Parochial Clergy by making provision for the sure speedy and effectual building rebuilding repairing and purchasing Houses and other necessary Buildings and Tenements for the use of their Benefices" And having considered such certificate plan and account *Now* we do approve thereof and do consent that such buildings and repairs shall be made as therein specified and that the said A. B. do borrow and take up at interest the sum of £ being the estimate of the expenses after deducting the value of the timber and other materials thought proper to be sold and which appears to us from the said account to be a sum not exceeding two years' net income and produce of the said living which money is to be paid to W. H. [a person nominated by us and the said A. B.] and applied according to the direction of the said act.

No. CCCXI.
*Ordinary and
Patron.*

No. CCCXII.

*Another Consent, where the Patronage is in the Crown (from
Sched. 21 Geo. 3).*

No. CCCXII.
*Patron
(Crown).*

Whereas the living or benefice of within the diocese of is in the patronage of the crown and rated above (*or* "under" *as the case may be*) twenty pounds in the Queen's Books (*or* "of the Chancellor of the Duke of Lancaster") and application hath been made for the building (*or* "rebuilding" "repairing" "purchasing" *or* "exchanging") the parsonage [or other building or land] for the use of the said living or benefice in pursuance of the powers given for that purpose by an act &c. (*as*

No. CCCXII. *before*) Now the Right Honourable First Lord Commissioner of the Treasury (or "Lord High Chancellor of Great Britain" or "Chancellor of the Duchy of Lancaster") being satisfied that such building (or "rebuilding" &c.) will be an improvement and advantage to the said living or benefice *Do* hereby consent that such building (or "repairs" &c.) shall be made according to the directions and the true intent and meaning of the said act.

No. CCCXIII.

No. CCCXIII.

Purchaser. A Purchaser's Consent to deliver up an Agreement for the Sale of an Allotment of Common.

I the undersigned do hereby consent that the agreement bearing date &c. and entered into between me and A. B. of &c. shall be delivered up to the said A. B. to be cancelled And I hereby agree to rescind the same and do discharge the said A. B. from the performance thereof in all respects *As witness my hand*

(*Purchaser*).

Consent by Protector of a Settlement, see post, DISENTAILING DEEDS.

No. CCCXIV.

No. CCCXIV.

Vendor. Consent by a Vendor that a Purchaser may retain Part of the Purchase Money.

And this Indenture further witnesseth and it is hereby declared and agreed and particularly the said (*cestui que trusts*) do hereby consent and declare that the payment as well of the said principal sum of £ being the remaining part of the said purchase-money as of the interest that shall become due in respect thereof shall not be required of the said (*P.*) during the life of the said A. B. by the said (*cestui que trusts*) or any of them or any of their executors administrators or assigns And also that the said sum of £ and interest shall continue and

be in the hands of the said (*P.*) his execuotrs administrators and assigns as a security to him and them and as a protection to the messuages and other hereditaments expressed to be hereby released against or from the (*a*) dower or thirds and all right and title of or to dower and all other claims and demands of her the said A. B. or of the said N. B. in her right And for that purpose that it shall and may be lawful for the said (*P.*) his heirs &c. by and out of the said sum of £ and the interest thereof to pay satisfy and reimburse himself and themselves all costs charges damages and expenses which he or they shall bear sustain or be put unto And all money and costs which shall be received and enforced from or out of the said messuages and other hereditaments expressed to be hereby released or any part thereof for or by reason or on account of the dower or thirds of the said A. B. or of any right interest claim or demand of her the said A. B. or the said N. B. in her right or for or by reason or on account of any action suit or other proceeding at law or in equity which shall or may be brought had commenced or prosecuted for establishing such dower or thirds or for enforcing and establishing such other right interest claim or demand as aforesaid or otherwise in relation thereto.

No. CCCXIV.
Vendor.

(*a*) See DOWER.

END OF VOL. I.

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Law

Eng

C883c.2

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